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**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

GUADALUPE SALAZAR, GENOVEVA
 LOPEZ, and JUDITH ZARATE, on behalf of
 themselves and all others similarly situated,

Plaintiffs,

vs.

MCDONALD'S CORP., a corporation,
 MCDONALD'S U.S.A., LLC, a limited liability
 company, MCDONALD'S RESTAURANTS OF
 CALIFORNIA, INC., a corporation, BOBBY O.
 HAYNES SR. AND CAROL R. HAYNES
 FAMILY LIMITED PARTNERSHIP d/b/a
 MCDONALD'S, a limited partnership, and DOES
 1 through 100, inclusive,

Defendants.

CASE NO. 3:14-CV-02096-RS

**CLASS ACTION - FIRST AMENDED
 COMPLAINT**

1. Failure to Pay All Wages When Due
2. Failure to Pay Overtime Wages
3. Failure to Pay Minimum Wages
4. Failure to Provide Required Meal Periods
 or Pay Missed Meal Period Wages
5. Failure to Provide Required Rest Breaks or
 Pay Missed Rest Break Wages
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Wage
 Statements
8. Failure to Indemnify Employees for
 Necessary Expenses
9. Negligence
10. California Labor Code Private Attorneys
 General Act
11. Unfair and Unlawful Business Practices
12. Declaratory Judgment
13. Retaliation

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a class action brought under California law by three individuals who are employed as crew members in McDonald's fast-food restaurants in Northern California operated by Defendant Bobby O. Haynes Sr. and Carol R. Haynes Partnership Limited Partnership, d/b/a McDonald's (along with Doe defendants 51 through 100, hereinafter "Haynes Partnership") as franchisee of Defendants McDonald's Restaurants of California, Inc., McDonald's U.S.A., LLC, and McDonald's Corporation (along with Doe defendants 1 through 50, collectively hereinafter "McDonald's"). Plaintiffs Guadalupe Salazar, Genoveva Lopez, and Judith Zarate bring this action on behalf of themselves and others similarly situated to recover the wages that Defendants unlawfully failed to pay them in violation of California law.

2. Plaintiffs Salazar, Lopez and Zarate are low-wage crew members working at the franchised McDonald's restaurants in Oakland, California that are operated by Haynes Partnership. Plaintiffs each struggle to support themselves and their families with the subsistence wages they earn from Defendants, and their ability to pay for the most basic necessities of life is reduced even further by Defendants' failure to pay what the law requires, as alleged herein.

3. By contrast, McDonald's is a multi-billion dollar business. On information and belief, it operates more than 35,000 restaurants globally, including approximately 1,300 restaurants in California. McDonald's and Haynes Partnership share legal responsibility for the wage theft and other violations of the crew members' legal rights at the McDonald's-franchised restaurants operated by Haynes Partnership in California.

4. Plaintiffs, like their crew member co-workers whom Defendants also employed during the applicable limitations period, spend or spent their workdays at McDonald's restaurants filling orders, preparing and cooking food, cleaning the restaurant, and serving customers under strictly regimented and pressured circumstances. That pressure results in significant part from McDonald's insistence that its franchisees like Defendant Haynes Partnership must strictly monitor, control, and curtail labor costs, which Defendants accomplish by not paying for all hours worked, not paying overtime premiums for all overtime hours, not paying the required extra hour for missed meal periods and rest breaks, and by using other unlawful stratagems to comply with

1 McDonald's requirement that labor costs at its franchised restaurants may not exceed a designated,
2 and artificially low, percentage of the restaurant's gross sales. Compounding this pressure is
3 McDonald's insistence that its franchised restaurants must also meet McDonald's strict labor-
4 intensive expectations for operational procedure and speed of service.

5 5. Although McDonald's has entered into a Franchise Agreement with Haynes
6 Partnership that, on information and belief, purports to delegate responsibility for restaurant
7 operations and for control over employees to Haynes Partnership, Haynes Partnership operates its
8 franchised restaurants as an agent of McDonald's. At all relevant times McDonald's has directed
9 and controlled the restaurants' operations, including by controlling the material terms and
10 conditions of employment of Plaintiffs and all other similarly situated crew members.

11 6. Despite McDonald's vast revenues and multi-billion dollar annual profits,
12 Defendants pay or paid Plaintiffs and other crew members only the minimum wage or slightly
13 more than the minimum wage. Indeed, according to published reports, due to the low wages
14 McDonald's pays employees, the government is required to spend approximately \$1.2 billion
15 annually on McDonald's employees in anti-poverty program aid, including Supplemental Nutrition
16 Assistance Program ("food stamps") and Temporary Assistance for Needy Families. Defendants
17 then reduce Plaintiffs' and crew members' ability to earn even the bare minimum reflected in their
18 low wage rates by engaging in a variety of forms of unlawful wage theft, including but not limited
19 to: altering or condoning the alteration of time records to avoid paying Plaintiffs and other crew
20 members for time they work and for overtime premiums they earn; requiring, suffering, or
21 permitting Plaintiffs and other crew members to work off the clock without compensation; failing
22 to pay legally required additional wages when Defendants fail to provide Plaintiffs and crew
23 members with full and timely meal periods and rest breaks; and failing to indemnify Plaintiffs and
24 other crew members for necessary business expenses they incur in the discharge of their duties,
25 including requiring Plaintiffs and other crew members to bear the expense of cash register
26 shortages and failing to reimburse the expense of cleaning required uniforms as required by
27 California law.

28 7. Plaintiffs seek compensatory, statutory, declaratory, and injunctive relief for

1 themselves and the class of all current and former crew member employees of McDonald's
 2 restaurants operated by Haynes Partnership in California during the applicable limitations period
 3 ("Class Members"), to compensate these workers for the unpaid and underpaid wages that
 4 Defendants Haynes Partnership and McDonald's have stolen from them and to protect current and
 5 future McDonald's workers from being subjected to similar wage theft and otherwise unlawful
 6 working conditions by this multi-billion dollar business.

7 **PARTIES**

8 8. Plaintiff GUADALUPE SALAZAR is a fast-food restaurant worker who has been
 9 employed by Defendants as a crew member at the McDonald's restaurant located at 7300 Bancroft
 10 in Oakland, California, from approximately June 2012 through the present. Ms. Salazar is a
 11 resident of Oakland, California. Her wage rate is the California minimum wage, \$9.00 per hour.

12 9. Plaintiff GENOVEVA LOPEZ is a fast-food restaurant worker who has been
 13 employed by Defendants as a crew member at the McDonald's restaurant located at 2520 East 12th
 14 Street in Oakland, California, from approximately May 2013 through the present. Ms. Lopez is a
 15 resident of Oakland, California.

16 10. Plaintiff JUDITH ZARATE is a fast-food restaurant worker who has been employed
 17 by Defendants as a crew member at the McDonald's restaurant located at 2520 East 12th Street in
 18 Oakland, California, from approximately 2003 through the present. Ms. Zarate is a resident of
 19 Oakland, California.

20 11. Each of the Plaintiffs identified immediately above brings this lawsuit on her own
 21 behalf, on behalf of all similarly situated current and former McDonald's crew members employed
 22 by Defendants at Haynes Partnership-operated restaurants in the State of California, and on behalf
 23 of all aggrieved employees and the general public pursuant to California Labor Code §2698 et seq.
 24 and California Business & Professions Code §17200 et seq. Plaintiffs bring this class action for
 25 injunctive relief and to recover, among other things, wages and penalties from unpaid wages earned
 26 and due, including but not limited to unpaid wages for time worked off the clock, unpaid minimum
 27 wages, unpaid and illegally calculated overtime compensation, late and missed meal period and
 28 rest break wages, wages due to discharged or quitting employees, penalties for failure to maintain

1 required records and to provide accurate itemized wage statements, unreimbursed business
2 expenses, and interest, attorneys' fees, costs, and expenses.

3 12. The proposed class these Plaintiffs seek to represent includes the following similarly
4 situated individuals ("Class Members"): All individuals currently or formerly employed by
5 Defendants as crew members at one or more of Defendant Haynes Partnership's franchised
6 McDonald's restaurants in California ("the Restaurants"), at any time within the period beginning
7 four (4) years prior to the filing of this action and ending at the time this action proceeds to final
8 judgment or settles (the "Class Period"). Plaintiffs reserve the right to name additional class
9 representatives and to identify sub-classes and sub-class representatives as may be necessary and
10 appropriate.

11 13. Plaintiffs are informed and believe, and thereon allege, that Defendant
12 MCDONALD'S CORPORATION is a multinational, multi-billion dollar Delaware corporation,
13 with its principal place of business in Illinois. On information and belief, McDonald's Corporation
14 operates more than 35,000 restaurants globally and in all 50 states, including California. At all
15 relevant times, on information and belief, Defendant McDonald's Corporation has done business in
16 California and committed the unlawful acts alleged in this Complaint.

17 14. Plaintiffs are informed and believe, and thereon allege, that Defendant
18 MCDONALD'S U.S.A., LLC is a multinational, multi-billion dollar Delaware limited liability
19 company with its principal place of business in Illinois, which operates restaurants in all 50 states,
20 including California. On information and belief, Defendant McDonald's U.S.A., LLC is a wholly-
21 owned subsidiary of Defendant McDonald's Corporation. At all relevant times, on information
22 and belief, Defendant McDonald's U.S.A., LLC has done business in California and committed the
23 unlawful acts alleged in this Complaint.

24 15. Plaintiffs are informed and believe, and thereon allege, that Defendant
25 MCDONALD'S RESTAURANTS OF CALIFORNIA, INC. is a California corporation and a
26 wholly-owned subsidiary of McDonald's U.S.A., LLC and/or of McDonald's Corporation, and
27 operates more than 1,300 restaurants in California. At all relevant times, on information and belief,
28 Defendant McDonald's Restaurants of California, Inc. has done business in California and

1 committed the unlawful acts alleged in this Complaint.

2 16. Plaintiffs are informed and believe, and thereon allege, that Defendant BOBBY O.
3 HAYNES SR. AND CAROL R. HAYNES FAMILY LIMITED PARTNERSHIP, d/b/a
4 McDonald's, also known as BobCar McDonald's, BobCar Partnership, or Bob Car Management
5 Co., is a California limited partnership that conducts business in California, principally operating
6 fast-food restaurants and providing restaurant and related services. Bobby O. Haynes Sr. and Carol
7 R. Haynes Partnership Limited Partnership operates at least six fast-food McDonald's restaurants
8 in California pursuant to franchise agreements with McDonald's, including but not limited to
9 restaurants located at 7300 Bancroft and 2520 East 12th Street in Oakland, California, and
10 restaurants at four other locations in Oakland and San Leandro, California.

11 17. Defendant Bobby O. Haynes Sr. and Carol R. Haynes Partnership Limited
12 Partnership is owned and operated by Bobby O. Haynes, Sr., Carol R. Haynes, Michele Haynes-
13 Watts, and Bobby O. Haynes, Jr.

14 18. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
15 Plaintiffs at this time, and Plaintiffs therefore sue such DOE Defendants under fictitious names.
16 Plaintiffs are informed and believe, and thereon allege, that each Defendant designated as a DOE is
17 in some manner responsible for the occurrences alleged herein, and that Plaintiffs' and Class
18 Members' injuries and damages, as alleged herein, were proximately caused by the conduct of such
19 DOE Defendants. Plaintiffs will seek leave of the court to amend this Complaint to allege the true
20 names and capacities of such DOE Defendants when ascertained.

21 19. Defendants MCDONALD'S CORPORATION, MCDONALD'S U.S.A., LLC,
22 MCDONALD'S RESTAURANTS OF CALIFORNIA, INC., and DOES 1 through 50, inclusive,
23 are collectively referred to herein as "McDonald's."

24 20. Defendants BOBBY O. HAYNES SR. AND CAROL R. HAYNES FAMILY
25 LIMITED PARTNERSHIP and DOES 51 through 100, inclusive, are collectively referred to
26 herein as "Haynes Partnership."

27 21. Defendants Haynes Partnership and McDonald's at all relevant times have been
28 employers covered by the California Labor Code and California Industrial Welfare Commission

1 (“IWC”) Wage Order 5-2001.

2 JURISDICTION AND VENUE

3 22. Plaintiffs originally filed this matter on March 12, 2014 in the Superior Court of the
4 State of California in the County of Alameda. That court had jurisdiction because Defendants
5 McDonald’s and Haynes Partnership regularly conduct business in California. Venue in that
6 court was proper because Plaintiffs Salazar, Lopez, Zarate, and other persons similarly situated
7 performed and continue to perform work for Defendants in the County of Alameda. Defendants
8 maintain offices and facilities and transact business in the County of Alameda, and Defendants’
9 illegal wage theft policies and practices that are the subject of this action were applied, and
10 continue to be applied, at least in part, to Plaintiffs and other persons similarly situated in the
11 County of Alameda.

12 23. On May 7, 2014, Defendant Haynes Partnership removed this matter to federal court
13 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). The parties have agreed,
14 in a Joint Case Management Statement filed on August 7, 2014, that venue is proper in the United
15 States District Court of the Northern District of California, and that this Court has personal
16 jurisdiction over all known parties.

17 GENERAL FACTUAL ALLEGATIONS

18 24. McDonald’s contracts with, on information and belief, approximately 300
19 franchisees that operate McDonald’s restaurants in California.

20 25. Defendant Haynes Partnership, d/b/a McDonald’s, is a McDonald’s franchisee that
21 operates at least six McDonald’s restaurants in Alameda County, California (hereinafter
22 “Restaurants”).

23 26. Plaintiffs Salazar, Lopez, and Zarate are McDonald’s crew members who performed
24 and continue to perform work in the Restaurants owned and operated by Defendants Haynes
25 Partnership and McDonald’s. Plaintiffs seek relief from Defendants’ policies and practices of
26 denying Plaintiffs and Class Members wages and compensation owed under California law.

27 27. Haynes Partnership and McDonald’s jointly operate the Restaurants and tightly
28 control and monitor the working conditions of Plaintiffs and Class Members, including but not

1 limited to controlling and monitoring the job duties performed by crew members, the hours worked
2 by crew members, and the rate of service provided by crew members in the Restaurants.

3 28. Defendants have a policy and practice of engaging in comprehensive classwide
4 measures to curtail labor costs and to limit labor costs to a defined percentage of sales revenues,
5 even when complying with McDonald's requirement of maintaining such a low ratio labor costs to
6 total sales results in violations of Plaintiffs' and Class Members' workplace rights under California
7 law.

8 29. Defendants reduce the labor costs in the Restaurants not only by paying low wages
9 to Plaintiffs and Class Members, but also by maintaining, encouraging, and approving policies and
10 practices that have the purpose and effect of depriving Plaintiffs and Class Members of their full
11 and timely wages when due.

12 30. As a result of the policies and practices described below, work time that Plaintiffs
13 and Class Members perform is routinely not recorded by Defendants on Plaintiffs' and Class
14 Members' pay stubs, and Defendants have failed and continue to fail to compensate Plaintiffs and
15 Class Members for all wages due to them and for missed, late, and shortened rest breaks and meal
16 periods, as required by California law.

17 **A. Plaintiffs' Work as McDonald's Crew Members**

18 31. In each of the Restaurants, low-wage crew members including Plaintiffs perform
19 and have performed a variety of duties, including but not limited to working as cashiers, taking
20 food orders from customers at the counter and at the drive-through, serving food to customers,
21 stocking supplies, preparing and cooking food, and cleaning the restaurant.

22 32. Plaintiffs and Class Members applied to work and were hired to perform work in the
23 Restaurants by making applications through McDonald's on-line application form, "Hiring to
24 Win," and by submitting applications to managers in the Restaurants. For example, Plaintiffs
25 Salazar and Lopez applied through McDonald's on-line application form.

26 33. Plaintiffs and Class Members work and have worked a variety of scheduled shifts in
27 the Restaurants, including but not limited to shifts as short as three hours and as long as 10 hours.

28 34. Plaintiffs and Class Members are directly supervised in the Restaurants by

managers, including a store manager and shift managers. These managers inform crew members of their work assignments and work schedules, and instruct crew members as to when they may take breaks. No Plaintiff or crew member is permitted to take any meal period or rest break unless and until a manager expressly instructs the worker to take that specific break. These managers, at the direction of others at both Haynes Partnership and McDonald's, closely monitor and take steps to control labor costs in the Restaurants throughout the workday.

B. Defendants' Wage Theft

Alteration of Time Records

35. Defendant Haynes Partnership is required by McDonald's to use and does in fact use a computer hardware and software system including a point-of-sale ("POS") system (referred to collectively hereinafter as "computer system") in the Restaurants that is designed and maintained by McDonald's to enable Haynes Partnership and McDonald's to closely monitor data about labor and sales in the Restaurants. Among other things, the computer system collects real-time information regarding each employee's hours, including punch-in and punch-out times, and pay rates.

36. Plaintiffs and Class Members are required to punch in at the beginning of their shift and to punch out at the end of their shift. They are also required to punch out at the beginning of each meal period and rest break and to punch back in at the end of each meal period and rest break.

37. McDonald's computer system tracks Plaintiffs' and Class Members' punch-in and punch-out times.

38. Plaintiffs are informed and believe, and thereon allege, that:

- a. McDonald's computer system indicates to restaurant managers when a crew member's punch-in and punch-out times entitle that crew member to premium pay for overtime hours worked, and when a crew member has not received a full or timely rest break or meal period.
- b. Restaurant managers are able to, and routinely do, alter the punch-in and punch-out times of crew members in McDonald's computer system. For example, Plaintiffs have received paychecks showing fewer hours than they were punched in and

1 worked because, on information and belief, managers altered their punch records.

- 2 c. Restaurant managers engage in a policy and practice of altering the punch-in and
3 punch-out times of crew members in order to change time entries that demonstrate
4 when those crew members did not receive a legally required meal period or rest
5 break and in order to eliminate time that crew members worked past the end of their
6 scheduled shifts and/or time that would be subject to overtime pay requirements.
- 7 d. Defendants engage in a practice of managerial alteration of time records as a means
8 of reducing their crew members' hours as reflected in McDonald's computer
9 system.
- 10 e. McDonald's computer system records and retains records of all alterations to crew
11 members' punch-in and punch-out times.
- 12 f. Defendants are aware of, condone, ratify, and intentionally accept the benefits of
13 their practice and policy of altering Plaintiffs' and Class Members' time records in a
14 manner designed to under-report and under-pay the time actually worked by
15 Plaintiffs and Class Members.

16 Off-the-Clock Work

17 39. Defendants have required Plaintiffs and Class Members to perform unpaid off-the-
18 clock work in violation of California law.

19 40. Defendants' managers require, suffer, or permit Plaintiffs and Class Members to
20 perform work at times those workers are not punched into McDonald's computer system. For
21 example, managers have required, suffered, or permitted Plaintiff Salazar to work before punching
22 in when she arrived before her shift was scheduled to start. Such time worked is not recorded in
23 McDonald's computer system and is not compensated.

24 41. Plaintiffs are informed and believe, and thereon allege, that Defendants have a
25 policy and practice of requiring crew members to engage in off-the-clock work in order to maintain
26 low "labor" cost numbers in the McDonald's computer system and to avoid recording overtime
27 hours.

28 42. All of the unpaid work that Defendants required, suffered, or permitted Plaintiffs

1 and Class Members to perform has benefitted Defendants, enabling them to increase profits at the
2 workers' expense and to keep labor costs lower, both in absolute terms and as a percentage of
3 sales.

4 Missed, Late and Shortened Meal Periods and Rest Breaks

5 43. Defendants engage in a policy and practice of providing rest breaks and meal
6 periods to Plaintiffs and Class Members in such a manner that Plaintiffs and crew members have
7 not and do not receive timely and full rest breaks and meal periods. Defendants fail to pay required
8 additional wages when Plaintiffs and Class Members are not provided timely and full rest breaks
9 and meal periods.

10 44. Restaurant managers determine when Plaintiffs and Class Members may take rest
11 breaks and meal periods. With rare exception, Plaintiffs and Class Members are not permitted to
12 take a rest break or meal period without first being specifically instructed by a manager that they
13 must go on break.

14 45. Defendants have a policy and practice of not permitting Plaintiffs and Class
15 Members to take rest breaks and meal periods when the Restaurants are busy.

16 46. Plaintiffs are informed and believe, and thereon allege, that Defendants have a
17 policy and practice of not permitting Plaintiffs and Class Members to take rest breaks and meal
18 periods when a store inspection from a Mystery Shopper is expected. As described in paragraph 82
19 below, a Mystery Shopper is an agent of McDonald's who routinely visits McDonald's restaurants
20 to evaluate the service he or she receives. Plaintiffs are informed and believe, and thereon allege,
21 that the Restaurants' managers are aware of the time period during which such Mystery Shopper
22 visits will occur. Defendants have a policy and practice of not permitting Plaintiffs and Class
23 Members to take rest breaks or meal periods during that period, which may be a two- or three-hour
24 time period. For example, Defendants' managers have told Plaintiff Salazar not to take rest breaks
25 or meal periods when a Mystery Shopper may visit. Defendants' managers have also told Plaintiff
26 Lopez that she may not go on rest breaks or meal periods during corporate inspections.

27 47. Because of the policies and practices described above, Defendants regularly fail to
28 provide Plaintiffs and other crew members with a full 30-minute meal period beginning within the

1 first five hours of work. For example, Plaintiffs Salazar and Lopez have regularly worked five or
2 more hours before receiving a duty-free 30-minute meal period.

3 48. Defendants have a policy and practice of providing Plaintiffs and Class Members
4 with rest breaks that are provided earlier or later than legally required, including by not providing
5 Plaintiffs and Class Members with their first ten-minute rest break until more than 3-1/2 hours of
6 work, and by requiring Plaintiffs and Class Members to take their rest break near or at the
7 beginning of their shift, even when it is reasonably practicable to provide the required break near or
8 at the middle of the work period. For example, Plaintiffs Lopez and Zarate have often not been
9 permitted to take a rest break until after they have worked four or more hours, and Plaintiff Salazar
10 has been required to take a rest break at the very beginning of her shift.

11 49. Defendants have a policy and practice of requiring Plaintiffs and Class Members,
12 when they work shifts that entitle them to a second ten-minute rest break, to take their second ten-
13 minute rest break toward the end or at the very end of their shift, or to not take a second break at
14 all, even when it is reasonably practical to provide the required break near or at the middle of the
15 work period. For example, managers have required Plaintiffs to take their second rest break on
16 shifts lasting six hours or longer near or at the end of their shifts, or have denied them a second rest
17 break altogether.

18 50. Defendants have a policy and practice of requiring Plaintiffs and Class Members,
19 when they work shifts that entitle them to a second ten-minute rest break, to combine their first or
20 second ten-minute rest break with their thirty-minute meal period, even when it is reasonably
21 practicable to provide the required rest break near or at the middle of the shift. For example,
22 Plaintiff Lopez has been required to combine her ten-minute rest break and thirty-minute meal
23 period despite it being reasonably practicable to take them separately.

24 51. Plaintiffs are informed and believe, and thereon allege, that Defendants require
25 Plaintiffs and Class Members to take late rest breaks and meal periods and to combine rest breaks
26 and meal periods in order to minimize the need to schedule coverage for crew members who are on
27 breaks and to keep labor costs artificially and unlawfully low.

28 52. Defendants have a policy and practice of providing Plaintiffs and Class Members

1 with rest breaks that are less than ten minutes in length.

2 53. Plaintiffs are informed and believe, and thereon allege, that Restaurant managers
3 have a practice of adjusting the punch records of Plaintiffs and Class Members to show that they
4 received full and timely ten-minute rest breaks and full and timely thirty-minute meal periods when
5 they did not.

6 54. Even though Defendants' time records generally record the exact times of crew
7 member breaks (subject to the problems discussed in paragraphs 35-38), thus providing Defendants
8 with full knowledge of when Plaintiffs and Class Members are not receiving meal periods and rest
9 breaks in compliance with California law, Defendants have a policy and practice of failing to pay
10 Plaintiffs and Class Members one hour of additional pay at their regular rate for each day in which
11 they are not provided a rest break or meal period for the reasons discussed in paragraphs 43-53 or
12 for any other reason.

13 Failure to Pay Overtime Rates

14 55. Plaintiffs and Class Members regularly have not received premium pay for the time
15 they work in excess of eight hours per day and 40 hours per week. For example, Plaintiffs Salazar
16 and Zarate have worked more than eight hours in a day and not been paid overtime.

17 56. Plaintiffs are informed and believe, and thereon allege, that Restaurant managers
18 have a policy and practice of altering crew members' recorded hours in the McDonald's computer
19 system to eliminate overtime hours from the time records and/or to move to a different date or
20 otherwise alter overtime hours so that the hours are treated as not subject to overtime premium pay.

21 57. Plaintiffs are informed and believe, and thereon allege, that the McDonald's
22 computer system alerts Restaurant managers when a crew member's recorded punch-in and punch-
23 out times entitle the crew member to overtime and notifies the managers that this is an "overtime
24 violation."

25 Failure to Keep Accurate Records and Provide Accurate Itemized Wage Statements

26 58. As a result of the policies and practices described above, Defendants do not keep
27 accurate records of, or provide Plaintiffs and Class Members accurate itemized wage statements
28 reflecting, all time that Plaintiffs and Class Members work or the proper wage rates, including but

1 not limited to overtime rates, applicable to all hours that Plaintiffs and Class Members work.

2 59. The pay stubs and itemized wage statements provided to Plaintiffs and Class
3 Members are not accurate because they fail to identify McDonald's as a joint employer of Plaintiffs
4 and Class Members.

5 Failure to Indemnify Employees for Necessary Expenses

6 60. When crew members working as cashiers show a cash shortage at the end of their
7 shifts, Defendants have required them, including Plaintiff Salazar, to make up the shortage with
8 their own money without showing that the shortage was the result of the crew members' gross
9 negligence or willful or intentional act.

10 61. Defendants have required or require that Plaintiffs and Class members wear
11 McDonald's uniforms as a condition of employment. Defendants provided or provide a limited
12 number of uniforms to Plaintiffs and Class Members, yet have implemented no policy or practice
13 that provides for the maintenance of these uniforms. Consequently, Plaintiffs and Class Members
14 have been required to incur expenses and/or to spend unpaid time to maintain their uniforms
15 themselves. Because Defendants run a food service business, the uniforms of Plaintiffs and Class
16 Members regularly become greasy or dirty and necessitate special and/or frequent cleaning.
17 Defendants have a policy and practice of failing to reimburse Plaintiffs and Class Members for the
18 reasonable expenses they have incurred in maintaining their uniforms, and of failing to pay them
19 for the time they must spend maintaining their uniforms.

20 Retaliation

21 62. After Plaintiff Salazar complained to an owner of Haynes Partnership that her pay
22 check did not show all the hours she worked, her manager retaliated against her by reducing her
23 hours, scheduling her to work on days she could not work, denying her requested vacation days
24 denied, harassing her in the restaurant, and otherwise. Her manager also threatened her with
25 termination and told her not to report pay check problems to the owners again.

26 63. In the summer and fall of 2014, following Plaintiff Salazar's filing of this lawsuit
27 and raising concerns regarding her pay, breaks, and other conditions of employment, Ms. Salazar
28 was subjected to adverse treatment by her manager at Haynes Partnership. For example, Ms.

1 Salazar's manager at Haynes Partnership disciplined Ms. Salazar on the grounds that she was
2 purportedly uncooperative and threatened Ms. Salazar with suspension from work. On information
3 and belief, these adverse actions against Ms. Salazar were in retaliation for her raising concerns
4 about her conditions of employment and her involvement in this lawsuit.

5 **C. McDonald's System and the McDonald's Franchise**

6 64. McDonald's operates, franchises, and services a system of restaurants that prepare,
7 assemble, package, and sell a limited menu of value-priced foods under the McDonald's System.
8 The McDonald's System is a concept of restaurant operations that includes, among other things,
9 certain rights in trademarks, real estate, marketing, and operational information designed to
10 promote uniformity of operations.

11 65. The key to McDonald's success, according to its own internal and publicly filed
12 documents, is "branding" – developing and maintaining customer trust in the McDonald's brand,
13 so whether that customer is in a restaurant owned and operated by McDonald's directly or owned
14 and operated by a franchisee, and whether the customer is in a restaurant in his or her hometown, a
15 neighboring state, or a foreign country far away, the customer will know what to expect from the
16 McDonald's experience, including what to expect from McDonald's crew member interactions.

17 66. Plaintiffs are informed and believe, and thereon allege, that globally, approximately
18 7,000 McDonald's restaurants are owned and operated directly by McDonald's, and approximately
19 28,000 are owned and operated by McDonald's franchisees, companies like Defendant Haynes
20 Partnership.

21 67. Plaintiffs are informed and believe, and thereon allege, that McDonald's has a
22 franchise agreement with Haynes Partnership that requires Haynes Partnership to strictly adhere to
23 the McDonald's System, including, *inter alia*, by complying with all standards, business policies,
24 practices and procedures prescribed by McDonald's; using formulas, methods and policies relating
25 to operations, inventory, accounting, management, and advertising that are set forth in detailed
26 manuals developed and provided by McDonald's; using corporate-supplied or -approved
27 equipment and food products; submitting to regular comprehensive site inspections and computer
28 monitoring; and sharing a percentage of gross sales revenues with McDonald's.

1 68. As detailed in paragraphs 71 through 139 below, McDonald's franchise agreements,
2 including on information and belief, the franchise agreement McDonald's maintains with Haynes
3 Partnership, vest in McDonald's significant control over restaurant operations, working conditions,
4 personnel training, and the finances of franchisees' restaurants, and give McDonald's unlimited
5 and unrestricted authority to inspect restaurants to monitor workplace conditions, including labor
6 conditions, and to ensure compliance with the standards and policies of McDonald's.

7 69. McDonald's maintains national franchise standards to which all of its franchisees
8 are expected and required to adhere, and that affect almost every aspect of the restaurants'
9 functioning, including practices and policies affecting crew members' labor conditions. Plaintiffs
10 are informed and believe, and on this basis allege, that Defendant Haynes Partnership is subject to
11 these national franchise standards.

12 70. McDonald's requires all of its franchisees to use only those goods, services,
13 supplies, fixtures, equipment, inventory, and computer hardware that meet the specifications,
14 requirements, and standards that McDonald's has formulated for use in the McDonald's System.

15 71. Pursuant to the standard McDonald's franchise agreement, a franchisee may not
16 assign its contractual commitment to another party.

17 72. McDonald's evaluates and grades all franchisees on whether they have satisfied its
18 franchise standards, including standards governing the recruitment, development, training and
19 retention of qualified personnel.

20 73. McDonald's franchise agreements are for fixed term periods, usually 20 years, and
21 do not grant franchisees an automatic renewal option. If a franchise agreement is not renewed, all
22 ownership rights in the franchised restaurant or restaurants covered by that agreement revert in full
23 to McDonald's.

24 74. Plaintiffs are informed and believe, and on this basis allege, that McDonald's
25 exercises significant control over the finances of franchisees, including the finances of Defendant
26 Haynes Partnership, including in the following ways:

- 27 a. McDonald's franchise agreements entitle McDonald's to receive a percentage of all
28 franchisees' gross sales revenue;

- b. McDonald's expects all franchisees to earn a specified profit on a monthly basis;
- c. McDonald's requires all franchisees to purchase food from McDonald's-approved vendors;
- d. McDonald's requires all franchisees to pay a service fee based on a percentage of each restaurant's sales;
- e. McDonald's requires all franchisees to pay rent for use of the restaurant property or premises on which the franchisee-operated restaurants are located;
- f. McDonald's mandates promotional pricing of products sold in all franchisee-operated restaurants, which may sometimes require selling already low-margin products at a loss;
- g. McDonald's encourages all franchisees to renovate restaurants and may condition renewal of a franchise agreement on the franchisee's commitment to renovate;
- h. McDonald's requires all franchisees to use computer software that tracks financial information of the franchisees' restaurants, including sales, inventory and labor costs;
- i. McDonald's requires all franchisees to submit financial data to McDonald's, while maintaining its own independent access to the franchise's financial data; and
- j. McDonald's establishes rules for the maintenance of all franchisees' accounting books and records.

75. McDonald's significantly restricts the business autonomy of its franchisees and their ability to make independent decisions based upon their own assessment of what is best for their particular business, by instead requiring compliance with the myriad standards it imposes on all its franchisee-owned restaurants as well as upon its own corporate-owned restaurants.

D. McDonald's Exercises Control Over Haynes Partnership' Operations, Policies, Procedures and Personnel

McDonald's Oversees, Evaluates and Controls the Restaurants' Operations Through the Use of Business Consultants and Other Agents

76. After three consecutive years of declining stock price and slumping consumer satisfaction, McDonald's instituted a "Plan to Win" program in the early 2000's, which was a

1 worldwide program designed to update, improve, and reinforce the company's brand. One of the
2 elements of this program was "People." McDonald's "People" program focused on the supervision
3 and training of McDonald's employees in all restaurants, whether corporate- or franchisee-owned,
4 and was designed to overcome concerns that negative customer experiences with service received
5 at McDonald's restaurants – regardless of ownership – were having a negative impact on the
6 corporate brand.

7 77. Plaintiffs are informed and believe, and thereon allege, that Defendant McDonald's
8 "Plan to Win" continues to provide the common operational framework for all McDonald's
9 restaurants, including the Restaurants operated by Defendant Haynes Partnership.

10 78. Plaintiffs are informed and believe, and thereon allege, that in implementing the
11 "Plan to Win," McDonald's has paired each franchisee, including Defendant Haynes Partnership,
12 with a particular business consultant or consultants employed by McDonald's. The principal
13 responsibility of the McDonald's consultant in this paired relationship is to ensure that the
14 franchisee fully complies with all elements of the corporate strategy for improving restaurant
15 operations, including McDonald's objectives with respect to "People."

16 79. McDonald's exercises substantial control over franchisees' operations, policies,
17 procedures and personnel through its business consultants and other agents, who conduct regular
18 inspections and evaluations of the franchisee restaurants.

19 80. Plaintiffs are informed and believe, and thereon allege, that a McDonald's business
20 consultant is assigned to Haynes Partnership and conducts regular inspections and evaluations of
21 the Restaurants.

22 81. McDonald's evaluates the operations of all of its franchisees in the categories of
23 quality, service, cleanliness, and people. As part of this evaluation, McDonald's business
24 consultants conduct a detailed top-to-bottom assessment of all aspects of franchisees' store
25 operations designed to ensure compliance with McDonald's corporate standards, processes,
26 practices and documentation, assigning a score for each aspect of the review.

27 82. Plaintiffs are informed and believe, and thereon allege, that McDonald's business
28 consultants, including the business consultant assigned to Haynes Partnership, evaluate and provide

1 feedback to franchisees on numerous separate restaurant “systems” that McDonald’s imposes on its
2 corporate-owned and franchisee-owned restaurants alike. As part of this process, on information
3 and belief, McDonald’s consultants review the franchisee on numerous topics, including:

- 4 a. Recruitment and training of crew members and managers, including the amount of
5 McDonald’s-conducted training employees have received;
- 6 b. Shift management and crew scheduling;
- 7 c. Compliance with McDonald’s operational guidelines and standards on subjects such
8 as food assembly and quality, cleanliness, human resources practices, and crew
9 members’ customer interaction;
- 10 d. Placement and use of promotional materials; and
- 11 e. Areas for improved compliance with McDonald’s corporate standards and
12 development of action plans to ensure compliance with those standards.

13 83. Plaintiffs are informed and believe, and thereon allege, that McDonald’s also
14 subjects each franchisee, including Defendant Haynes Partnership, to a regular series of
15 inspections, announced and unannounced, designed to ensure compliance with all corporate
16 directives, policies, and procedures. Any franchisee that fails to receive a satisfactory score on a
17 consultant’s review or assessment is subject to mandatory follow-up inspections by McDonald’s to
18 ensure that restaurant operations and compliance are significantly improved in accordance with
19 McDonald’s mandatory requirements.

20 84. McDonald’s sends agents to the Restaurants as part of its “Mystery Shopper”
21 program, to inspect the facilities, evaluate the speed, efficiency, and quality of the work performed
22 by crew members, and to criticize and require improvement in each instance in which the Mystery
23 Shopper identifies a circumstance in which one or more crew members failed to comply fully with
24 the requirements imposed by McDonald’s.

25 85. McDonald’s relies on the inspections, evaluations and reviews conducted by its
26 business consultants and other agents to control franchisees, including Haynes Partnership.
27 Plaintiffs are informed and believe, and thereon, allege that McDonald’s relies these inspections,
28 evaluations, and reviews in deciding whether the franchisee is eligible to renew or “rewrite” its

franchisee agreement; whether the franchisee may add new restaurants to its franchise or, alternatively, should lose restaurants; and whether the franchisee is eligible for McDonald's remodel programs.

McDonald's Exercises Control Over Haynes Partnership' Hiring, Wages, Discipline and Training of Restaurant Personnel

86. McDonald's exercises control over all franchisees, including Haynes Partnership, by requiring them to operate in compliance with the same uniform policies and procedures that McDonald's imposes on all of its franchisees, including its policies and procedures governing hiring and training employees, conducting wage surveys, and disciplining crew members.

87. Plaintiffs are informed and believe, and thereon allege, that McDonald's exercises control over franchisees' personnel practices, including in the following ways:

1. McDonald's sets franchise policies on diversity, discrimination and harassment (including mandated employee reporting mechanisms), management-employee communication, solicitation and distribution of literature, leaves of absence, and student workers;
2. McDonald's evaluates franchisees on their use of an "effective hiring process," including how job applicants are solicited;
3. McDonald's lists franchise job openings on its own website and encourages applicants to apply using a standardized McDonald's on-line application;
4. McDonald's provides and requires franchisees to use an on-line assessment tool for applicant screening, criteria for assessing the screening, and other criteria and instructions for interviewing applicants;
5. McDonald's requires franchise owners to attend and satisfactorily complete an extensive and detailed training program at Hamburger University on how to operate, staff, and manage McDonald's restaurants, and to enroll their managers in similar McDonald's required training at Hamburger University or other designated training centers;
6. McDonald's evaluates franchisees on whether franchisees have had their employees

1 participate in McDonald's-led trainings, including, for example, by requiring all
2 new hires to view the corporate training video that Plaintiff Lopez was required to
3 watch before beginning work;

4 7. McDonald's requires franchisees to conduct an employee satisfaction survey;

5 8. McDonald's evaluates franchisees on whether they have conducted wage reviews
6 and provides a form to use for such wage reviews;

7 9. McDonald's sets franchise disciplinary policy and provides forms used to document
8 workplace conduct;

9 10. McDonald's encourages franchisee employees to report instances of wage theft to
10 McDonald's, in addition to franchisee management;

11 11. McDonald's grades franchisees on employees' interactions with customers,
12 including their tone of voice, eye contact, facial expressions, words used, and
13 assembly of food items; and

14 12. McDonald's affects the range of possible franchisee wage rates by controlling
15 restaurants' staffing levels, controlling certain product pricing, requiring use of
16 specific supplies and suppliers, and charging marketing, service, and other franchise
17 fees that significantly impact franchisees' profit margins and budget lines.

18 88. Plaintiffs are informed and believe, and thereon allege, that McDonald's trains
19 franchisees' managers on personnel practices, including on state law requirements for employee
20 breaks and overtime, the number of employees that should be working each shift, the number of
21 employees that should be working at each station such as the grill, fryer, drink machine, registers
22 and drive-through window, how to balance fixed and non-fixed labor costs, how to calculate and
23 monitor a restaurant's labor percentage, and how to reduce labor costs through such practices as
24 not permitting overtime work.

25 89. Plaintiffs are informed and believe, and thereon allege, that McDonald's periodic
26 evaluations of its franchisees, including Defendant Haynes Partnership, are graded in part on
27 whether the franchise is using all of the documentation and record-keeping practices that
28 McDonald's requires.

90. Plaintiffs are informed and believe, and thereon allege, that McDonald's exercises extensive control over the personnel matters of all franchisees, including Haynes Partnership, because franchisees' labor costs are directly tied to McDonald's profits. In its February 2014 Form 10-K filed with the United States Securities and Exchange Commission, McDonald's Corporation acknowledged as much, stating that "key features" that can affect its "operations, plans and results" include "[t]he impact on [its] margins of labor costs that [it] cannot offset through price increases, and the long-term trend toward higher wages and social expenses in both mature and developing markets, which may intensify with increasing public focus on matters of income inequality."

McDonald's Exercises Control Over Staffing and Scheduling
of Crew Members at the Restaurants

91. Plaintiffs are informed and believe, and thereon allege, that McDonald's requires all franchisees, including Haynes Partnership, to use McDonald's computer software that establishes prescribed staffing levels, weekly employee schedules, and positions of crew members within a restaurant, and that McDonald's evaluates franchisees on whether they are using this software properly.

92. Plaintiffs are informed and believe, and thereon allege, that McDonald's instructs all franchisees, including Haynes Partnership, to use a positioning tool included in McDonald's computer software to ensure that the number of people working each shift and the number of people positioned at each station within the restaurant are consistent with, and not greater than, the numbers that McDonald's has determined are no more than the maximum number needed to fulfill its operational and financial priorities, and in particular its priorities of providing a certain level and speed of service while keeping labor costs below a specified percentage of gross sales.

93. Plaintiffs are informed and believe, and thereon allege, that McDonald's provides manuals, training and reference books, forms, and other instructions and guidelines to all franchisees, including Haynes Partnership, that set forth corporate standards and requirements, including but not limited to checklists to be used to check on store conditions, including supplies, level of staffing and cleanliness; and instructions for calculating the number of employees that should be staffed at varying intervals.

1 94. Plaintiffs are informed and believe, and thereon allege, that McDonald's business
2 consultants review corporate-generated staffing sheets and position sheets with all franchisees.

3 95. Plaintiffs are informed and believe, and thereon allege, that McDonald's business
4 consultants work with franchisees to control the amount of crew members' hours in restaurants in
5 relation to the amount of the restaurants' sales.

6 96. McDonald's requires all franchisee restaurants to remain open seven days per week
7 from at least 7:00 a.m. to 11:00 p.m., and McDonald's unilaterally determines whether its
8 franchises, including Haynes Partnership, will be open or closed on major holidays.

9 McDonald's Exercises Control Over Crew Members' Job Duties and Performance

10 97. Plaintiffs are informed and believe, and thereon allege, that McDonald's requires its
11 franchisees, including Haynes Partnership, to meet rigid timing requirements for every component
12 of restaurant transactions, that McDonald's tracks the timing of all crew members' execution of
13 these tasks using McDonald's software, and that McDonald's requires details of all crew members'
14 performance to be forwarded to McDonald's on a regular basis. For example, McDonald's
15 guidelines provide that a transaction at the drive through should take three or three and a half
16 minutes, and whether that time is met is tracked in part by when crew members enter certain
17 information on their cash registers.

18 98. McDonald's provides franchisees a positioning guide that tells restaurant managers
19 where crew members should be positioned within the store and corporate operating procedures for
20 each station such as the grill, the drive-through and the front registers.

21 99. Plaintiffs are informed and believe, and thereon allege, that McDonald's, through its
22 business consultant, indirectly counsels individual crew members at the Restaurants on their job
23 duties. On information and belief, McDonald's business consultants review crew member
24 performance and provide instructions on how crew members should improve their execution of job
25 duties to franchise managers, who then relay those instructions to the crew members.

26 100. Plaintiffs are informed and believe, and thereon allege, that McDonald's, through its
27 business consultant, has taken action to correct crew members' performance of job duties by
28 reporting issues to Restaurant managers, who then relay these corrections to crew members.

1 101. Plaintiffs are informed and believe, and thereon allege, that McDonald's business
2 consultants and other McDonald's agents review and monitor each franchisee, including Defendant
3 Haynes Partnership, to determine if crew members meet the various timing requirements for each
4 transaction in the restaurant, and will instruct franchisees to improve crew member performance if
5 the requirements are not being met.

6 McDonald's Exercises Control Over Haynes Partnership by Requiring the Franchisee to Use a
7 McDonald's Computer System and Monitoring Labor and Sales Data Collected By That System

8 102. Plaintiffs are informed and believe, and thereon allege, that McDonald's requires all
9 franchisees, including Defendant Haynes Partnership, to use McDonald's proprietary computer
10 hardware and software to track practically all transactions in the franchisee restaurants, including
11 sales, product mix, cash control, labor costs, and crew members' hours and schedules

12 103. Plaintiffs are informed and believe, and thereon allege, that McDonald's has access
13 to each of its franchisees' sales and other restaurant-level information, which is stored on the
14 McDonald's servers.

15 104. Plaintiffs are informed and believe, and thereon allege, that data from the
16 franchisees' computers is transferred to McDonald's on a daily basis and this data is reviewed
17 regularly by McDonald's to assess franchisee performance.

18 105. Plaintiffs are informed and believe, and thereon allege, that McDonald's computer
19 software permits all franchisees, including Defendant Haynes Partnership, to track whether labor is
20 "high" at a given time in the Restaurants, meaning whether labor costs represent a large percentage
21 of sales revenue.

22 106. Plaintiffs are informed and believe, and thereon allege, that McDonald's computer
23 software, which all franchisees are required to use, identifies when crew members have worked
24 hours that qualify for overtime pay and further that the data collected by the software system are
25 and may be used to produce a report showing crew members' hours worked without providing
26 legally required meal periods or rest breaks.

27 107. Plaintiffs are informed and believe, and thereon allege, that data captured by
28 McDonald's computer software is used by McDonald's and Haynes Partnership to produce Daily

1 Activity Reports (“DARs”) that reflect the punch-in and punch-out times of all employees in
2 franchisee restaurants on a given day.

3 108. Plaintiffs are informed and believe, and thereon allege, that McDonald’s business
4 consultants, when conducting inspections of franchisees, can and do request to review DARs and,
5 according to McDonald’s operating procedures, DARs are supposed to kept in the restaurants for
6 several months.

7 109. All McDonald’s franchisee crew members are required to punch in at the beginning
8 of their shift, to punch out at the beginning of rest breaks and meal periods, to punch back in at the
9 end of rest breaks and meal periods, and to punch out at the end of their shift. These times are
10 captured by McDonald’s computer software. At the end of each crew member’s shift, a paper
11 receipt is printed on which the crew member’s punch-in and punch-out times are recorded.

12 110. Restaurant managers have authority to edit records of punch-in and punch-out
13 entries made by crew members. Plaintiffs are informed and believe, and thereon alleged, that
14 McDonald’s software system tracks and records edits made to crew members’ punch-in and punch-
15 out times, and that McDonald’s can determine and is aware when crew members’ time has been
16 adjusted or edited.

17 JOINT LIABILITY ALLEGATIONS

18 A. Defendants Have Jointly Employed Plaintiffs and All Class Members

19 111. Plaintiffs and Class Members have been jointly employed by Defendants Haynes
20 Partnership and McDonald’s to work in the Restaurants. Much of these employees’ work has been
21 and is performed at the direction of Haynes Partnership’ supervisors based on specific guidelines,
22 procedures, and protocols mandated by Defendant McDonald’s and overseen and enforced by
23 Defendant McDonald’s. Haynes Partnership applies and enforces McDonald’s guidelines,
24 requirements, and training with respect to Plaintiffs and Class Members, including but not limited
25 to requirements regarding how crew members perform their job duties, how crew members are
26 evaluated, and how crew members are scheduled and positioned for work within each of the
27 Restaurants.

28 112. Defendant McDonald’s has, along with Defendant Haynes Partnership, jointly

1 controlled and dictated all material terms and conditions of the employment of Plaintiffs and Class
2 Members, including but not limited to by:

- 3 a. Dictating the specific tasks to be undertaken by Plaintiffs and Class Members and
4 the manner and order in which these tasks are to be completed, and enforcing
5 detailed standard operating procedures governing the work Plaintiffs and Class
6 Members have been required to perform, including off-the-clock work and other
7 time worked that McDonald's knew or should have known was not being
8 compensated and overtime hours worked that McDonald's knew or should have
9 known was not being properly compensated;
- 10 b. Devising and requiring standardized training that must be completed by Plaintiffs
11 and Class Members;
- 12 c. Overseeing directly and indirectly through on-site supervision and computer
13 monitoring the day-to-day performance of Plaintiffs and Class Members;
- 14 d. Conducting comprehensive evaluations and reviews on a regular basis that assessed
15 the performance of Plaintiffs and Class Members, including by measuring their
16 efficiency and productivity and the Restaurants' labor costs, including wages paid to
17 Plaintiffs and Class Members;
- 18 e. Developing plans to correct any deficiencies identified by McDonald's in the
19 evaluations and reviews of the Restaurants; and
- 20 f. Regularly assessing the productivity of all workers employed at the Restaurants,
21 including Plaintiffs and Class Members, and including a review of staffing levels
22 and labor costs.

23 113. McDonald's and Haynes Partnership jointly oversee and supervise the work of
24 Plaintiffs and Class Members through several means, including by McDonald's dictating the
25 required number of supervisory staff who oversee Plaintiffs' and Class Members' work
26 performance and productivity, and by McDonald's itself maintaining supervisory staff on the
27 premises at regular intervals.

28 114. McDonald's has set the standards for training, work performance, conduct, and

1 disciplinary infractions and procedures for all Plaintiffs and Class Members and thus exercises
2 shared responsibility for discipline and discharge decisions involving Class Members who violate
3 McDonald's' training, work performance, and/or conduct standards. Further, McDonald's has
4 authority and has jointly exercised the authority, along with Haynes Partnership, to discharge,
5 discipline, and/or correct the work of such employees for perceived infractions of either Haynes
6 Partnership' or McDonald's rules, policies, or procedures.

7 115. McDonald's requires Haynes Partnership to provide high quality, trained staff to
8 conduct its restaurant operations, including by imposing detailed standards for pre-employment
9 screening, orientation, and training that must be completed before Plaintiffs and Class Members
10 begin working at the Restaurants.

11 116. Plaintiffs are informed and believe, and thereon allege, that McDonald's has jointly
12 exercised control with Haynes Partnership over the number of hours, productivity standards,
13 schedules, and the speed and amount of work performed by Plaintiffs and Class Members by,
14 among other things:

- 15 a. Establishing standard operating metrics for the Restaurants that impose
16 requirements for accuracy, timely processing, and productivity;
- 17 b. Creating projections and formulae that establish, *inter alia*, the number of hours to
18 be expended in the Restaurants, the ratio of managers to crew members in the
19 Restaurants, the job duties and positions to be filled by managers and crew members
20 in the Restaurants, and the associated labor costs;
- 21 c. Requiring Haynes Partnership to collect detailed statistics on the number of hours
22 worked by Plaintiffs and each member of the Class on a daily basis and to report
23 these numbers to McDonald's in other regular reports and assessments of the
24 Restaurants' performance and finances;
- 25 d. Determining, through its budgeting and staffing projection practices, the specific
26 amount of budgeted hours that the Restaurants devote to servicing customers during
27 a particular workweek while also controlling the volume of food products that must
28 be sold at the Restaurants during any week and the required rates at which those

products must be sold; and

e. Other related means.

117. McDonald's has, along with Haynes Partnership, jointly exercised control over the pay that Plaintiffs and Class Members receive through various means, including but not limited to, by:

- a. Dictating the pace at which crew members' work must be performed;
- b. Exercising strict controls over what Haynes Partnership can pay crew members through McDonald's budgeting and staffing projection procedures;
- c. Exercising strict controls over the number and cost of overtime hours worked in the McDonald's restaurants;
- d. Closely monitoring the number of hours worked by crew members and income earned through sales of food and other goods to customers; and
- e. Other means designed to suppress and/or lower the wages paid to Plaintiffs and Class Members.

118. McDonald's has, along with Haynes Partnership, jointly exercised control over the working conditions under which Plaintiffs and Class Members perform their jobs by, among other things:

- a. Supervising, monitoring, and checking their work, as alleged in more detail above;
- b. Determining the protocol and procedure for performing all job functions at the McDonald's restaurants that must be followed as the minimum level of acceptable performance in those restaurants;
- c. Setting the daily pace of work, including by imposing onerous and unrealistic productivity standards;
- d. Setting work rules; and
- e. Other related means.

119. Defendants Haynes Partnership and McDonald's have been and continue to be joint employers of Plaintiffs and Class Members for the reasons above, and the following reasons, among others:

- a. Defendants have jointly controlled and dictated all material terms and conditions of the employment of Plaintiffs and Class Members;
- b. Plaintiffs and Class Members have jointly applied for employment through both Haynes Partnership and McDonald's, including by submitting applications to Haynes Partnership supervisors who are required to use and have in fact used orientation and/or training materials from McDonald's;
- c. Defendants Haynes Partnership and McDonald's jointly implement the new-hire orientation that Plaintiffs and Class Members must undertake after hiring, which has taken place at the Restaurants with McDonald's training materials;
- d. Defendants Haynes Partnership and McDonald's have had authority and have jointly exercised the authority to discipline and/or correct the work of Plaintiffs and Class Members for perceived infractions of either McDonald's or Haynes Partnership' rules or policies;
- e. Defendants Haynes Partnership and McDonald's have jointly exercised control over the number of hours and types of work performed by Plaintiffs and Class Members by, among other things, deciding whether and when to require crew members to perform work and deciding on the amount and pace of work the crew members must perform;
- f. Defendants Haynes Partnership and McDonald's have jointly exercised control over the working conditions under which Plaintiffs and Class Members perform their jobs by supervising, monitoring, and checking their work, including through inspections and Mystery Shoppers that rate crew members' job performance; by determining the protocol and procedure for assigning crew members to work stations, evaluating and disciplining crew members, and creating crew members' schedules; and by setting the daily pace of work;
- g. Defendants Haynes Partnership and McDonald's have jointly exercised control over the compensation paid to Plaintiffs and Class Members, including but not limited to by training Haynes Partnership owners and managers on how to control labor costs

1 through wage rates, scheduling, and compensation practices, and by requiring
2 Haynes Partnership Restaurants to maintain labor costs below a certain percentage
3 of gross sales; and

4 h. Plaintiffs and Class Members physically worked and reported to work on premises
5 that, on information and belief, are owned by McDonald's.

6 120. The restaurant job duties performed by Plaintiffs and Class Members constitute an
7 integral, core function of the restaurant business of Defendants Haynes Partnership and
8 McDonald's.

9 121. McDonald's has suffered or permitted Plaintiffs and other Class Members to work
10 in the Restaurants by acquiescing in and not hindering their working, including by not remedying
11 but instead accepting and profiting from the unlawful conditions under which they work;

12 122. Plaintiffs and Class Members have performed work that consists primarily of labor
13 that does not require specialized training, education, or the exercise of judgment or discretion to
14 perform.

15 123. For the reasons set forth above, among others, Defendants Haynes Partnership and
16 McDonald's, directly or indirectly, or through an agent or any other person, have employed or
17 exercised control over the wages, hours, or working conditions of Plaintiffs and Class Members.

18 124. For the reasons set forth above, among others, Defendant McDonald's, together
19 with Defendant Haynes Partnership, directly or indirectly, or through an agent or any other person,
20 employs or exercises control over the wages, hours, or working conditions of all Plaintiffs and
21 Class Members.

22 **B. Defendants Have Committed the Violations Alleged Herein as Co-Conspirators**

23 125. Plaintiffs are informed and believe, and thereon allege, that at all material times,
24 each Defendant acted and is continuing to act as a co-conspirator of each other defendant and of
25 certain unnamed and as-yet unknown co-conspirators.

26 126. Plaintiffs are informed and believe, and thereon allege, that prior to the start of the
27 applicable limitations periods, each defendant entered into a conspiracy and agreement with the
28 other defendants and with unnamed and unknown co-conspirators and/or subsequently joined said

1 conspiracy and ratified the prior acts and conduct of the other defendants and/or co-conspirators
2 who had previously entered into said conspiracy. The purpose of said ongoing conspiracy includes
3 unlawfully evading compliance with state labor laws in an effort to artificially reduce Defendants'
4 labor costs and unlawfully maximize Defendants' profits by failing to pay Plaintiffs and Class
5 Members the wages and benefits required by law, failing to provide meal periods, rest breaks, and
6 other labor rights mandated by law, failing to provide workers with information required by law,
7 failing to reimburse Plaintiffs and Class Members for necessary expenses, and by other means.
8 Plaintiffs are currently unaware of when each defendant or other co-conspirator joined said
9 conspiracy but, on information and belief, allege that Defendants and their co-conspirators all
10 knowingly, maliciously and willfully entered into said conspiracy which continues to this day. By
11 engaging in the conduct and omissions alleged in this Complaint, each defendant was acting within
12 the course and scope of its agency, with the authorization of the other defendants, and in
13 furtherance of the ongoing conspiracy.

14 **C. Defendants Have Aided and Abetted Each Other in the Commission of the Violations**
15 **Alleged Herein**

16 127. Defendants Haynes Partnership and McDonald's aided and abetted each other in the
17 commission of the violations against Plaintiffs and Class Members as alleged herein.

18 128. Haynes Partnership and McDonald's knew that their conduct as alleged herein was
19 in breach of their duties to Plaintiffs and Class Members, yet gave substantial assistance or
20 encouragement to each other to so act. In addition, the conduct of Haynes Partnership and
21 McDonald's breached those defendants' duties to Plaintiffs and Class Members.

22 129. Haynes Partnership and McDonald's have given substantial assistance or
23 encouragement to each other by, for example, requiring Plaintiffs and Class Members to meet high
24 productivity standards under severe time constraints, while also taking steps to keep labor costs
25 low, and by charging and agreeing to pay high franchise fees, and together caused violations of
26 Plaintiffs' and Class Members' rights under California law, as set forth herein.

27 **D. Haynes Partnership Acted as McDonald's Agent**

28 130. Plaintiffs are informed and believe, and thereon allege, that at all material times,

Haynes Partnership acted as an agent of McDonald's; Haynes Partnership employed Plaintiffs and Class Members on behalf of McDonald's for those defendants' mutual benefit; and Defendants jointly had the authority to control and exercised control over the wages, hours, and working conditions of Plaintiffs and Class Members.

131. The control McDonald's has asserted and continues to assert over Defendant Haynes Partnership exceeds any control necessary to protect McDonald's trademark or good will.

132. By engaging in the violations alleged herein, Haynes Partnership was acting within the course and scope of its agency, with the authorization of McDonald's.

E. McDonald's Was Negligent in Its Retention, Supervision, and/or Control of Haynes Partnership

133. On information and belief, McDonald's has been the owner and/or lessee of the Restaurants where Plaintiffs and Class Members worked, and the only franchisor of the Restaurants during the applicable Class Period.

134. At all relevant times, McDonald's has closely monitored, supervised, and controlled the operations of the Restaurants, and has known or should have known of the violations of the state labor and employment law rights of Plaintiffs and Class Members that have been occurring at the Restaurants since the start of the limitations period, including violations committed by Haynes Partnership, as alleged herein. These violations include but are not limited to requiring Plaintiffs and Class Members to work without proper compensation for all hours worked, failing to compensate Plaintiffs and Class Members at legally required wage rates, failing to compensate Plaintiffs and Class Members when not provided legally required meal periods and rest breaks, and failing to disclose critical wage and hour information to Plaintiffs and Class Members.

135. At all relevant times, McDonald's has negligently retained, supervised, and/or controlled Haynes Partnership as the franchisee of its restaurants. Although McDonald's knew or should have known of the violations alleged herein, McDonald's failed to take any reasonable steps to stop those violations from continuing or increasing in scope or frequency, and instead created conditions that inevitably increased the likelihood that these violations would continue to occur and worsen, including by maintaining contractual arrangements with Haynes Partnership that contain

1 powerful economic incentives for both McDonald's and Haynes Partnership to require increased
2 productivity from Plaintiffs and Class Members while lowering the costs of their labor, including
3 by reducing the amount of reported hours and overtime hours worked.

4 136. McDonald's knew or should have known that retaining Haynes Partnership to
5 operate the Restaurants on McDonald's behalf would create an undue risk that the state labor and
6 employment law rights of Plaintiffs and Class Members would be violated as alleged herein, and
7 that those workers would thereby be harmed, in part because McDonald's knew or should have
8 known, based on the terms of its contracts with Haynes Partnership and its knowledge of what had
9 been occurring at the Restaurants and at other restaurants throughout the country, including
10 McDonald's-corporate restaurants, that Haynes Partnership would not be able to simultaneously
11 meet McDonald's productivity standards, stay within McDonald's labor and cost budgets, and
12 maintain a profit margin at the rates paid by McDonald's while complying with all applicable state
13 employment law standards.

14 137. McDonald's has known or should have known that Haynes Partnership was
15 violating and would continue to violate the employment law rights of Plaintiffs and Class Members
16 as alleged herein, because McDonald's closely monitored, supervised, and controlled Haynes
17 Partnership's restaurant operations, including the hours worked by Plaintiffs and Class Members,
18 the breaks received by those crew members, the amounts paid to those crew members, and the
19 conditions under which those crew members labored.

20 138. Although McDonald's has had the authority to control, and has exercised substantial
21 control, over Haynes Partnership's operation of the Restaurants, including the material terms and
22 conditions of the employment of Plaintiffs and other Class Members, McDonald's has failed to
23 ensure compliance with state employment law standards or to implement effective procedures for
24 ensuring such compliance in the Restaurants. McDonald's also failed to take reasonable measures
25 to prevent the violations alleged herein from continuing to occur including, *inter alia*, by failing to
26 set rates for restaurant services, productivity standards, and staffing and labor budgets that would
27 realistically permit compliance with the applicable labor and employment laws; failing to exercise
28 its authority to monitor, supervise, and control Haynes Partnership in a manner that ensured

1 compliance with state labor and employment laws, instead of turning a willful blind eye to
 2 violations; and/or failing to prohibit Haynes Partnership from continuing to violate Plaintiffs' and
 3 Class Members' rights as alleged herein.

4 139. The violations and harms to Plaintiffs and Class Members alleged herein are the
 5 result of McDonald's failure to exercise due care in the retention, supervision, and/or control of
 6 Haynes Partnership and, based on the facts described above, which McDonald's knew or should
 7 have known when it continued to retain, supervise, and control Haynes Partnership, those
 8 violations and harms were foreseeable.

9 **CLASS ACTION ALLEGATIONS**

10 140. Plaintiffs Salazar, Lopez, and Zarate, as class representatives, bring this action on
 11 behalf of a class of all similarly situated individuals, pursuant to Federal Rule of Civil Procedure
 12 §23. The proposed class includes the following similarly situated individuals ("Class Members"):
 13 All individuals currently or formerly employed by Defendants as crew members at one or more of
 14 Defendant Haynes Partnership's franchised McDonald's restaurants in California ("the
 15 Restaurants"), at any time within the period beginning four (4) years prior to the filing of this
 16 action and ending at the time this action proceeds to final judgment or settles (the "Class Period").
 17 Plaintiffs reserve the right to name additional class representatives and to identify sub-classes and
 18 sub-class representatives as may be necessary and appropriate.

19 141. Ascertainability. The identity of all Class Members is readily ascertainable from
 20 Defendants' records, and class notice can be provided to all Class Members by conventional means
 21 such as U.S. mail, email, and workplace postings.

22 142. Numerosity. The size of the class makes a class action both necessary and efficient.
 23 The class consists of over 100 McDonald's employees currently or formerly working at the
 24 Restaurants during the applicable limitations period. Members of the class are ascertainable but so
 25 numerous that joinder is impracticable. The class includes future class members who will benefit
 26 from the injunctive relief sought herein and whose joinder is inherently impossible.

27 143. Common Questions of Law and Fact. This case poses common questions of law
 28 and fact, which are likely to generate common answers advancing resolution of the litigation,

affecting the rights of all Class Members, including:

- a. The legality of Defendants' compensation systems;
- b. The policies, practices, programs, procedures, protocols, and plans of Defendants regarding payment of wages;
- c. The policies, practices, programs, procedures, protocols, and plans of Defendants regarding payment of overtime premiums;
- d. Whether Defendants paid Plaintiffs and Class Members their full wages when due as required by California Labor Code §§204, 206, 223, and 1195.5;
- e. Whether Defendants required, suffered, or permitted Plaintiffs and Class Members to work in excess of eight hours per day and/or 40 hours per week;
- f. Whether Defendants paid Plaintiffs and Class Members the legally required overtime premium for hours worked in excess of eight hours per day and/or 40 hours per week;
- g. Whether Defendants provided Plaintiffs and Class Members with accurate itemized wage statements as required by California Labor Code §226;
- h. Whether Defendants maintained records for Plaintiffs and Class Members as required under California Labor Code §§226 and 1174 and IWC Wage Order No. 5-2001 §7.
- i. Whether Defendants violated California Labor Code §226.7 and 512 and IWC Wage Order 5-2001 §11 by failing to provide Plaintiffs and Class Members with a meal period for every five hours worked and by failing to compensate said employees one hour of wages in lieu of each full and timely meal period that was not provided;
- j. Whether Defendants violated California Labor Code §226.7 and IWC Wage Order 5-2001 §12 by failing to provide paid rest breaks to Plaintiffs and Class Members for every four hours or major fraction thereof worked, failed to provide paid rest breaks to Plaintiffs and Class Members in the middle of each work period, and failed to compensate said employees one hour of wages in lieu of each full and

1 timely rest break that was not provided;

2 k. Whether Defendants violated California Labor Code §§221, 450 and 2802 and IWC
3 Wage Order 5-2001 §§8 and 9 by failing to indemnify Plaintiffs and Class Members
4 for necessary business expenses they incurred in the discharge of their duties,
5 including by requiring Plaintiffs and Class Members to pay for cash register
6 shortages that were not the result of the employee's dishonest or willful act or gross
7 negligence and by failing to maintain Plaintiffs' and Class Members' required
8 uniforms or reimburse Plaintiffs and Class Members for the necessary expenses of
9 cleaning their uniforms or other necessary expenses;

10 l. Whether Defendants engaged in unfair and unlawful business practices in violation
11 of Business & Professions Code §17200 et seq.;

12 m. Whether Defendants are joint employers of Plaintiffs and Class Members;

13 n. Whether the named Defendants conspired with each other and/or with any unnamed
14 co-conspirator, as alleged herein;

15 o. Whether any Defendants aided and abetted other Defendants in the commission of
16 the violations alleged herein;

17 p. Whether any Defendants acted as the agent of other Defendants in the commission
18 of the violations alleged herein;

19 q. Whether McDonald's negligently retained, supervised and/or controlled Haynes
20 Partnership; and

21 r. What relief is necessary to remedy Defendants' unfair and unlawful conduct as
22 herein alleged.

23 144. Typicality. The claims of the individual plaintiffs are typical of the claims of the
24 class as a whole. Defendants' unlawful wage policies and practices, which have operated to deny
25 Plaintiffs the overtime premiums, minimum wages, other unpaid wages, and other compensation,
26 benefits, penalties, and protections required by law, are typical of the unlawful wage policies and
27 practices that have and will continue to operate to deny other Class Members lawful compensation.

28 145. Adequacy of Class Representation. The individual plaintiffs can adequately and

1 fairly represent the interests of the class as defined above, because their individual interests are
 2 consistent with, not antagonistic to, the interests of the class.

3 146. Adequacy of Counsel for the Class. Counsel for Plaintiffs have the requisite
 4 resources and ability to prosecute this case as a class action and are experienced labor and
 5 employment and class action attorneys who have successfully litigated other cases involving
 6 similar wage and hour issues, including on a class action basis.

7 147. Propriety of Class Action Mechanism. This suit is properly maintainable as a class
 8 action under Federal Rule of Civil Procedure §23 because Defendants have implemented a series of
 9 unlawful schemes that are generally applicable to the class, making it appropriate to issue final
 10 injunctive relief and corresponding declaratory relief with respect to the class as a whole. This suit
 11 is also properly maintainable as a class action because the common questions of law and fact
 12 predominate over any questions affecting only individual members of the class. For all these and
 13 other reasons, a class action is superior to other available methods for the fair and efficient
 14 adjudication of the controversy set forth in this Complaint.

15 **FIRST CLAIM FOR RELIEF**

16 **Failure to Pay All Wages When Due**

17 **[Cal. Labor Code §§204, 206, 223, 225.5 1194.5 1195.5]**

18 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

19 **Against All Defendants)**

20 148. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate
 21 by reference all previous paragraphs.

22 149. California Labor Code §204 requires an employer to pay all wages to its employees
 23 when those wages are due. California Labor Code §206 requires that, in a case of a dispute over
 24 wages, an employer must pay, without condition and within the time set by statute, all wages, or
 25 parts thereof, conceded to be due. California Labor Code §223 prohibits an employer from secretly
 26 paying a lower wage while purporting to pay the required wage designated by statute or by
 27 contract. California Labor Code §225.5 provides that every person who unlawfully withholds
 28 wages due any employee in violation of §223 shall be subject to a civil penalty for an initial

violation of \$100 for each failure to pay each employee, and for each subsequent violation or any willful or intentional violation of \$200 for each failure to pay each employee plus 25 percent of the amount unlawfully withheld. California Labor Code §1195.5 requires an employer to correctly compute and pay wages due to employees, including wages above the minimum wage.

150. During the Class Period, Defendants have followed and continue to follow several policies and practices directly resulting in their failure to pay Plaintiffs and Class Members all wages for all hours worked when they are due, and of withholding wages due by secretly paying a lower wage than purported. These policies and practices include, but are not limited to the following:

- a. Altered Time Records. On information and belief, Defendants have failed and continue to fail to pay Plaintiffs and Class Members for all hours worked by following a policy and practice of encouraging, permitting, and/or ratifying managers or supervisors routinely to edit or delete time recorded by the punch-in and punch-out system. On information and belief, this policy and practice has resulted in Defendants paying Plaintiffs and Class Members for less time than they have actually worked.
- b. Off-the-Clock Work. Defendants have followed and continue to follow a policy and practice of requiring, suffering, or permitting Plaintiffs and Class Members to perform uncompensated work off the clock while not punched in.
- c. Minimum Wages, Overtime, and Missed Meal Period and Rest Break Premium Wages. As alleged in the Second through Fifth Claims for Relief below and incorporated by reference here, Defendants have followed and continue to follow a policy and practice of failing to pay Plaintiffs and Class Members minimum wages, overtime compensation, and additional wages due for missed, untimely, or shortened meal periods and rest breaks, thereby failing to pay Plaintiffs and Class Members all wages due for all hours worked.

151. Defendants have committed and continue to commit the acts alleged herein knowingly and willfully.

152. As a proximate result of Defendants' unlawful actions and omissions, Plaintiffs and Class Members have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief from Defendants' violations of the California Labor Code.

153. California Labor Code §1194.5 authorizes injunctions where an employer has willfully violated laws governing wages, hours, or working conditions. Plaintiffs and current employee Class Members, who are low-wage workers for whom Defendants' failure to pay all wages when due for all hours worked creates substantial hardship, are entitled to preliminary and permanent injunctive relief under the governing legal standards, and are entitled to an order requiring Defendants to pay all wages when due and to keep accurate track of all time Plaintiffs and Class Members spend working each day.

SECOND CLAIM FOR RELIEF

Failure to Pay Overtime Wages

[Cal. Labor Code §§510, 1194, 1194.5, 1198; IWC Wage Order No. 5-2001, §3]

(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class

Against All Defendants)

154. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

155. It is unlawful under California law for an employer to require, suffer or permit an employee to work in excess of eight hours per workday or 40 hours per workweek without paying premium wages under California Labor Code §510 and IWC Wage Order 5-2001 §3.

156. California Labor Code §1198 makes employment of an employee for longer hours than the IWC sets or under conditions the IWC prohibits unlawful. California Labor Code §1194(a) entitles an employee to recover in a civil action the unpaid balance of all overtime compensation due but not paid.

157. Plaintiffs and Class Members are current and former non-exempt employees entitled to the protections of California Labor Code §§510, 1194, and IWC Wage Order No. 5-2001.

1 158. Plaintiffs and Class Members have worked and at times continue to work in excess
2 of eight hours per workday and in excess of 40 hours per workweek.

3 159. During the Class Period, Defendants have followed and continue to follow a policy
4 and practice of not paying Plaintiffs and Class Members properly for overtime, and have failed and
5 continue to fail properly to compensate Plaintiffs and Class Members for all overtime hours
6 worked under California law. For example, Defendants have followed and continue to follow a
7 policy and practice of failing to pay Plaintiffs and Class Members for all overtime hours
8 Defendants require, permit, or suffer Plaintiffs and Class Members to work off the clock; hours that
9 Defendants alter or remove from time records; and hours Defendants move from one day to
10 another to avoid overtime rates.

11 160. Defendants have committed and continue to commit the acts alleged herein
12 knowingly and willfully.

13 161. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
14 Plaintiffs and Class Members have sustained economic damages, including but not limited to
15 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover
16 economic and statutory damages and penalties and other appropriate relief from Defendants'
17 violations of the California Labor Code and IWC Wage Order 5-2001.

18 162. California Labor Code §1194.5 authorizes injunctions where an employer has
19 willfully violated laws governing wages, hours, or working conditions. Plaintiffs and current
20 employee Class Members, who are low-wage workers for whom Defendants' failure to pay
21 required overtime creates substantial hardship, are entitled to preliminary and permanent injunctive
22 relief under the governing legal standards, and are entitled to an order requiring Defendants to pay
23 required overtime premiums and to keep track of the time Plaintiffs and Class Members spend
24 working over eight hours each day and over 40 hours each week.

THIRD CLAIM FOR RELIEF

Failure to Pay Minimum Wages

[Cal Labor Code §§1182.12, 1194, 1194.2, 1194.5, 1197, 1198;

IWC Wage Order No. 5-2001, §4]

(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class

Against All Defendants)

163. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

164. California Labor Code §§1182.12 and 1197, and IWC Wage Order 5-2001 §4, require Defendants to pay Plaintiffs and Class Members at or above the state minimum wage of \$8.00 per hour for every hour Defendants suffer or permit those employees to work.

165. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits. California Labor Code §§1194(a) and 1194.2(a) provide that an employer that has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

166. During the Class Period, Defendants have followed and continue to follow a policy and practice of failing to pay Plaintiffs and Class Members at or above the California minimum wage for many hours worked by Plaintiffs and Class Members, including but not limited to hours Defendants require, permit, or suffer Plaintiffs and Class Members to work off the clock and hours that Defendants alter or remove from time records.

167. Defendants have committed and continue to commit the acts alleged herein knowingly and willfully.

168. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiffs and Class Members have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief from Defendants' violations of the California Labor Code and IWC Wage Order 5-2001.

169. California Labor Code §1194.5 authorizes injunctions where an employer has willfully violated laws governing wages, hours, or working conditions. Plaintiffs and current employee Class Members, who are low-wage workers for whom Defendants' failure to pay required overtime creates substantial hardship, are entitled to preliminary and permanent injunctive relief under the governing legal standards, and are entitled to an order requiring Defendants to pay minimum wages and to keep accurate track of the time Plaintiffs and Class Members spend performing all compensable work.

FOURTH CLAIM FOR RELIEF

Failure to Provide Required Meal Periods or Pay Missed Meal Period Wages

[Cal. Labor Code §§226.7, 512, 1194.5, 1198;

IWC Wage Order No. 5-2001, §11]

(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class

Against All Defendants)

170. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

171. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by an applicable Industrial Wage Order. California Labor Code §512 and IWC Wage Order 5-2001 §11(A) prohibit employers from employing a worker for more than five hours without a meal period of at least 30 minutes. California Labor Code §512 prohibits employers from employing a worker for more than 10 hours without a second meal period of at least 30 minutes. Under both California Labor Code §226.7(b) and IWC Wage Order 5-2001 §11(B), if an employer fails to provide an employee a meal period as required, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday that a meal period is not provided as required.

172. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

173. During the Class Period, Defendants have had and continue to have a policy and practice of failing to provide Plaintiffs and Class Members full and timely meal periods required by

1 California Labor Code §§226.7 and 512 and IWC Wage Order 5-2001 §11, including but not
2 limited to through the following: Plaintiffs and Class Members often have not been and are not
3 provided a meal period within their first five hours of work. When Plaintiffs and Class Members
4 receive meal periods, these meal periods often have been, and continue to be, late or shortened.
5 Defendants' restaurant locations are frequently busy and Defendants have implemented and
6 continue to implement a policy and practice of understaffing crew members at all Haynes
7 Partnership Restaurants. Defendants have permitted and continue to permit Plaintiffs and Class
8 Members to take breaks only when told to do so by their managers. Defendants also have
9 prohibited and continue to prohibit Plaintiffs and Class Members from taking breaks when the store
10 is busy or during times when a Mystery Shopper may be coming to the restaurant. Through these
11 and other policies and practices alleged above and incorporated herein by reference, Plaintiffs and
12 Class Members have regularly been denied, and continue to be denied, the opportunity to take a
13 full, uninterrupted, and timely meal period as required under the California Labor Code §§226.7
14 and 512, and IWC Wage Order No. 5-2001 §11.

15 174. Defendants have further violated and continue to violate California Labor Code
16 §226.7 and IWC Wage Order No. 5-2001 §11, by having had and continuing to have a policy and
17 practice of failing to pay each of their employees who was not provided with a full and timely meal
18 period an additional one hour of compensation at each employee's regular rate of pay.

19 175. Defendants have committed and continue to commit the acts alleged herein
20 knowingly and willfully.

21 176. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
22 Plaintiffs and Class Members have sustained economic damages, including but not limited to
23 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover
24 economic and statutory damages and penalties and other appropriate relief from Defendants'
25 violations of the California Labor Code and IWC Wage Order 5-2001.

26 177. California Labor Code §1194.5 authorizes injunctions where an employer has
27 willfully violated laws governing wages, hours, or working conditions. Plaintiffs and current
28 employee Class Members, who are low-wage workers for whom Defendants' failure to provide

required meal periods or pay an additional hour's wages when required meal periods are missed, late, or shortened creates substantial hardship, are entitled to preliminary and permanent injunctive relief under the governing legal standards, and are entitled to an order requiring Defendants to provide required meal periods, to pay one hour's wages for every day that an employee's required meal period is missed, late, or shortened, and to keep accurate track of the times Plaintiffs and Class Members begin and end each of their meal periods.

FIFTH CLAIM FOR RELIEF

Failure to Provide Required Rest Breaks or Pay Missed Rest Break Wages

[Cal. Labor Code §§226.7, 1194.5 1198; IWC Wage Order No. 5-2001, §12]

(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class

Against All Defendants)

178. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

179. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any rest break mandated by an applicable Industrial Wage Order. IWC Wage Order 5-2001 §12(A) requires employers to authorize and permit employees who work three and one half or more hours in a day to take a paid rest break of at least 10 minutes for every four hours worked or major fraction thereof, which insofar as practicable shall be in the middle of each work period. Under both California Labor Code §226.7(b) and IWC Wage Order 5-2001 §12(B), if an employer fails to provide an employee a rest break as required, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday that a rest break is not provided as required.

180. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

181. During the Class Period, Defendants have had and continue to have a policy and practice of failing to provide Plaintiffs and Class Members full and timely rest breaks required by California Labor Code §226.7 and IWC Wage Order 5-2001 §12, including but not limited to through the following:

1 1. Missed, Late, and Shortened Rest Breaks. As set forth above, Defendants willfully
 2 understaff the Restaurants, in part, on information and belief, to satisfy Defendants'
 3 objectives that labor costs be kept to a minimum. As a direct consequence of this
 4 understaffing and imperative to keep labor costs low, Plaintiffs' and Class
 5 Members' rest breaks frequently have been and continue to be missed, late, and/or
 6 shortened. Plaintiffs and Class Members regularly have not been authorized or
 7 permitted to take their first or second 10-minute rest break, have been only
 8 authorized or permitted to take less than a full 10-minute rest break, or have been
 9 otherwise required to perform work during their first or second 10-minute rest
 10 break.

11 2. Rest Break Timing. Additionally, Defendants have followed and continue to follow
 12 a policy and practice of failing to provide Plaintiffs and Class Members 10-minute
 13 rest breaks in the middle of each work period despite it being reasonably practicable
 14 to provide the required break near or at the middle of the work period, including but
 15 not limited to by requiring Plaintiffs and Class Members to take their first 10-minute
 16 rest break near or at the beginning of their shift or after more than four hours of
 17 work, by requiring Plaintiffs and Class Member to take their 10-minute rest breaks
 18 consecutively with or shortly before or after their 30-minute meal periods, and by
 19 requiring Plaintiffs and Class members to take a second 10-minute rest break near or
 20 at the end of their shifts, thereby violating California Labor Code §226.7 and IWC
 21 Wage Order No. 5-2001 §12.

22 182. Defendants have further violated and continue to violate California Labor Code
 23 §226.7 and IWC Wage Order No. 5-2001 §12, by having had and continuing to have a policy and
 24 practice of failing to pay each of their employees who was not provided with a full and timely rest
 25 break an additional one hour of compensation at each employee's regular rate of pay.

26 183. Defendants have committed and continue to commit the acts alleged herein
 27 knowingly and willfully.

28 184. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,

1 Plaintiffs and Class Members have sustained economic damages, including but not limited to
 2 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover
 3 economic and statutory damages and penalties and other appropriate relief from Defendants'
 4 violations of the California Labor Code and IWC Wage Order 5-2001.

5 185. California Labor Code §1194.5 authorizes injunctions where an employer has
 6 willfully violated laws governing wages, hours, or working conditions. Plaintiffs and current
 7 employee Class Members, who are low-wage workers for whom Defendants' failure to provide
 8 required rest breaks or pay an additional hour's wages when required rest breaks are missed, late,
 9 or shortened creates substantial hardship, are entitled to preliminary and permanent injunctive
 10 relief under the governing legal standards, and are entitled to an order requiring Defendants to
 11 provide required rest breaks, to pay one hour's wages for every day that an employee's required
 12 rest break is missed, late, or interrupted, and to keep accurate track of the times Plaintiffs and Class
 13 Members begin and end each of their rest breaks.

14 **SIXTH CLAIM FOR RELIEF**

15 **Failure to Maintain Required Records**

16 **[Cal. Labor Code §§226, 1174, 1194.5, 1198; IWC Wage Order No. 5-2001 §7]**

17 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

18 **Against All Defendants)**

19 186. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate
 20 by reference all previous paragraphs.

21 187. California Labor Code §1174(c)-(d) requires employers to keep records showing the
 22 names and addresses of all employees employed, and to keep, at a central location in the State of
 23 California or at the establishments at which employees are employed, payroll records showing the
 24 hours worked daily by and the wages paid to all employees employed at the establishment. IWC
 25 Wage Order 5-2001 §7(A)(3) further requires employers to keep time records showing when the
 26 employee begins and ends each work period, meal period, and split shift interval. Under §7(A)(5),
 27 employers must also record each employee's total hours worked and applicable rates of pay, and
 28 must make such information "readily available" to the employee upon request. Under §7(C), all

1 required records must be in the English language and in ink or other indelible form, properly dated,
2 showing month, day, and year, and must be kept on file by the employer for at least three years at
3 the place of employment or at a central location within the State of California. Under both §7(C)
4 and California Labor Code §226(b), all required records must be available for inspection by an
5 employee upon reasonable request.

6 188. California Labor Code §1198 makes unlawful the employment of an employee
7 under conditions the IWC prohibits.

8 189. Pursuant to Defendants' policy and practice, Defendants have willfully failed, and
9 continue willfully to fail, to maintain accurate, complete, and readily available records, in violation
10 of California Labor Code §1174 and IWC Wage Order 5-2001 §7.

11 190. In addition, Defendants have failed and continue to fail to maintain required records
12 that accurately reflect the actual time and hours worked by Plaintiffs and Class Members and the
13 regular and overtime rates of pay associated with these hours worked.

14 191. Plaintiffs and Class Members have suffered and will continue to suffer actual
15 economic harm resulting from these recordkeeping violations, as they have been, and will continue
16 to be, precluded from accurately monitoring the wages to which they are entitled, have been
17 required to retain counsel and others to evaluate and calculate unpaid wages, and have suffered
18 delays in receiving the wages and interest that are due and owing to them. Defendants' ongoing
19 violations of these mandatory recordkeeping laws have caused, and will continue to cause,
20 irreparable harm to Plaintiffs and Class Members, among other reasons because as long as
21 Defendants fail to maintain the required records, Plaintiffs and Class Members will be unable to
22 determine or demonstrate the precise number of hours actually worked, or the wages and penalties
23 owed to them for the hours that Defendants have required, suffered or permitted them to work.

24 192. By willfully failing to maintain the records required by California Labor Code §
25 1174(c) or the accurate and complete records required by §1174(d), Defendants are also liable for a
26 civil penalty of five hundred dollars for each violation under §1174.5.

27 193. California Labor Code §1194.5 authorizes issuance of an injunction where an
28 employer has willfully violated laws governing wages, hours, or working conditions. Plaintiffs and

1 current employee Class Members are entitled to injunctive relief under the governing legal
 2 standards, and are entitled to an order requiring Defendants to provide Plaintiffs and Class
 3 Members all of the information required by California Labor Code §1174 and IWC Wage Order 5-
 4 2001.

5 **SEVENTH CLAIM FOR RELIEF**

6 **Failure to Furnish Accurate Itemized Wage Statements**

7 **[Cal. Labor Code §§204, 226; IWC Wage Order No. 5-2001, §7]**

8 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

9 **Against All Defendants)**

10 194. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate
 11 by reference all previous paragraphs.

12 195. California Labor Code §226(a) requires employers semimonthly or at time of
 13 paying wages to provide to their employees detailed wage and hour information including total
 14 hours worked, applicable hourly rates, and deductions. IWC Wage Order 5-2001 §7(B) requires
 15 employers semimonthly or at the time of each payment of wages to furnish to each employee an
 16 itemized statement in writing showing the following information: all deductions; the inclusive
 17 dates of the period for which the employee is paid; the name of the employee or the employee's
 18 social security number; and the name of the employer. California Labor Code §204(b)(2) requires
 19 that if an employee works in excess of the employee's normal work period in one pay period and
 20 the employer pays for those hours in the following pay period, the hours in excess of the
 21 employee's normal work period in the current pay period must be itemized as corrections on the
 22 paystub for the next regular pay period, and the paystub containing those corrections must state the
 23 inclusive dates of the pay period for which the employer is correcting its initial report of hours
 24 worked. These required disclosures of information are essential to enable employees to determine
 25 whether they have been paid in compliance with the law and to determine the identity of all
 26 employers who are responsible for any payments that remain due.

27 196. California Labor Code §226(e) provides that an employee who suffers injury as a
 28 result of a knowing and intentional failure by an employer to comply with §226(a) may recover the

1 greater of actual damages or the civil penalties designated by statute of \$50 for the initial pay
2 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
3 period up to an aggregate penalty of \$4,000.

4 197. California Labor Code §226.3 provides that any employer who violates §226(a)
5 shall further be subject to a civil penalty of \$250 per employee per violation in an initial citation
6 and \$1,000 per employee for each violation in a subsequent citation for which the employer fails to
7 provide the employee a wage deduction statement or fails to keep the records required in §226(a).

8 198. California Labor Code §1198 makes employment of an employee under conditions
9 the IWC prohibits unlawful.

10 199. Pursuant to Defendants' unlawful policies and practices alleged herein, Defendants
11 have knowingly and intentionally failed to furnish Plaintiffs and Class Members with the
12 information required by California Labor Code §226(a) and IWC Wage Order 5-2001 §7(B),
13 including but not limited to the legally mandated disclosures of total hours worked, hourly rates,
14 identity of all joint employers, and an itemization of all deductions taken. This failure has injured,
15 continues to injure, and was intended to injure Plaintiffs and Class Members by, among other
16 things, enabling Defendants to avoid paying these workers all wages due without detection of
17 wrongdoing; creating confusion among these workers over whether they had received all wages
18 due and owing; making it difficult and expensive for these workers to reconstruct pay records and
19 accurate records of all hours worked; forcing these workers to make mathematical computations to
20 analyze whether the wages paid compensated them for all hours worked; requiring these workers to
21 retain attorneys and others to help them determine the fact, scope, and extent of Defendants'
22 wrongful conduct; and causing delay in these workers recovering their full back pay and interest.

23 200. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
24 Plaintiffs and Class Members have sustained economic damages, including but not limited to
25 unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover
26 such economic and statutory damages and penalties and other appropriate relief from Defendants'
27 violations of the California Labor Code and IWC Wage Order 5-2001.

28 201. California Labor Code §226(h) authorizes courts to issue injunctive relief to remedy

violations of §226(a). Plaintiffs and Class Members are entitled to injunctive relief under the governing legal standards, and are entitled to an order requiring Defendants: (a) to immediately begin providing to Plaintiffs and current employee Class Members itemized wage statements containing all of the information required to be disclosed by California Labor Code §226(a); and (b) to immediately provide to all Plaintiffs and Class Members the information required to be disclosed by California Labor Code §226(a), dating back to those employees' beginning of employment or to the start of the applicable limitations period, whichever is further back in time.

EIGHTH CLAIM FOR RELIEF

Failure to Indemnify Employees for Necessary Expenses

[Cal. Labor Code §§221, 450, 1198, 2802, 1194.5; IWC Wage Order No. 5 2001, §§8, 9]

(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class

Against All Defendants)

202. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate by reference all previous paragraphs.

203. California Labor Code §2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. California Labor Code §221 makes it unlawful for employers to collect or receive from an employee any part of wages paid. California Labor Code §450 makes it unlawful for an employer to compel or coerce employees to purchase anything of value from the employer. IWC Wage Order 5-2001 §8 provides that the only circumstances under which an employer may take a deduction from an employee's wages due to cash shortage, breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act. IWC Wage Order 5-2001, §9 provides that if an employer requires a uniform or part of a uniform to be worn by an employee, the employer must provide and maintain the uniform, or pay for the maintenance of that uniform.

204. Defendants have failed and continue to fail to indemnify Plaintiffs and Class Members for all business expenses and/or losses incurred in direct consequence of the discharge of

1 their duties, including but not limited to by requiring Plaintiffs and Class Members to bear the cost
2 of: (1) cash shortages without being able to show that such shortages were the result of the
3 employee's gross negligence or dishonest or willful act; and (2) maintaining uniforms Defendants
4 required and continue to require them to wear.

5 205. By requiring Plaintiffs and Class Members to pay for work-related expenses without
6 reimbursement, and by deducting cash shortages from the pay of Plaintiffs and Class Members
7 when they worked at cash registers without showing the shortage was the result of the employee's
8 gross negligence or dishonest or willful act, Defendants, pursuant to their policies and practices,
9 have violated, and on information and belief continue to violate, California Labor Code §§221,
10 450, and 2802 and IWC Wage Order 5-2001, §8. These mandatory payments and deductions
11 constitute an unlawful mechanism by which Defendants obtain unlawful deductions or kickbacks
12 from the wages they lawfully owe to Plaintiffs and Class Members.

13 206. By requiring Plaintiffs and Class Members to wear clean uniforms to work, but
14 providing them with a limited number of uniforms and implementing no policy providing for the
15 maintenance of the uniforms, Defendants have required and continue to require Plaintiffs and Class
16 Members to maintain their uniforms themselves, without being compensated for the costs of such
17 maintenance. As Defendants run a food service business, the uniforms of Plaintiffs and Class
18 Members regularly become greasy or dirty and necessitate special and/or frequent cleaning.
19 Defendants have failed and continue to fail to maintain the uniforms or reimburse Plaintiffs and
20 Class Members for the time spent and reasonable expenses they incur in maintaining their uniforms
21 in violation of California Labor Code §§221, 450, and 2802 and IWC Wage Order 5-2001, §9.

22 207. By requiring Plaintiffs and Class Members to pay for work-related expenses such as
23 uniform maintenance and cash shortages without reimbursement, Defendants, pursuant to their
24 policy and practice, have violated and continue to violate California Labor Code §§221, 450, and
25 2802 and IWC Wage Order 5-2001, §§8 and 9.

26 208. Defendants have committed and continue to commit the acts alleged herein
27 knowingly and willfully.

28 209. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,

1 Plaintiffs and Class Members have sustained economic damages, including but not limited to
 2 unpaid wages, unreimbursed expenses and improper deductions, and lost interest, in an amount to
 3 be established at trial, and are entitled to recover economic and statutory damages and penalties
 4 and other appropriate relief from Defendants' violations of the California Labor Code and IWC
 5 Wage Order 5-2001.

6 210. California Labor Code §1194.5 authorizes injunctions where an employer has
 7 willfully violated laws governing wages, hours, or working conditions. Plaintiffs and current
 8 employee Class Members, who are low-wage workers for whom Defendants' failure to reimburse
 9 necessary business expenses creates substantial hardship, are entitled to preliminary and permanent
 10 injunctive relief under the governing legal standards, and are entitled to an order requiring
 11 Defendants to reimburse all necessary expenses incurred by employees in the discharge of their
 12 duties, including by reimbursing Plaintiffs and Class Members for the costs of maintaining their
 13 uniforms, or by maintaining the uniforms, and to refrain from deducting cash shortages from
 14 employees' wages unless they can show the loss was the result of the employee's gross negligence
 15 or dishonest or willful act.

16 **NINTH CLAIM FOR RELIEF**

17 **Negligence**

18 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

19 **Against Defendant McDonald's)**

20 211. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate
 21 by reference all previous paragraphs.

22 212. McDonald's has owed and continues to owe a duty to Plaintiffs and Class Members,
 23 both as their joint employer and as an entity that benefits directly from their services, not to subject
 24 those individuals to the foreseeable harms as alleged herein that would reasonably result from
 25 McDonald's failure to exercise due care in its contracting and supervision of Haynes Partnership as
 26 the entity it chose to operate the Restaurants as its franchisee. As the owner of the McDonald's
 27 trademark and operator of the multinational McDonald's company and as a franchisor with
 28 unusually high systems of control over its franchisees, who operate on term-limited and conditional

1 contracts, McDonald's had and continues to have the contractual, actual, and other authority to
 2 ensure that its franchisees comply with all state labor and employment laws and to ensure that
 3 Plaintiffs' and Class Members' legal rights are fully protected while working in McDonald's
 4 restaurants, serving McDonald's food and selling McDonald's products, under McDonald's direct
 5 and indirect supervision.

6 213. On information and belief, at all relevant times, McDonald's has retained,
 7 supervised, and controlled Haynes Partnership as its agent and contractor for the purpose of
 8 operating the Restaurants.

9 214. McDonald's violated its duty to Plaintiffs and Class Members by failing to exercise
 10 due care in the retention, supervision, and/or control of Haynes Partnership. Given a long history
 11 of employment law violations at the Restaurants, and that the terms of the McDonald's-Haynes
 12 Partnership contract and attendant operating requirements and pressures created powerful
 13 incentives for Haynes Partnership to violate the labor and employment law rights of Plaintiffs and
 14 Class Members, and based on McDonald's close monitoring and control over the Restaurant's
 15 operations, McDonald's knew or should have known when it retained, supervised, and controlled
 16 Haynes Partnership as the franchisee of the Restaurants, that it was creating an undue risk of harm
 17 to Plaintiffs and Class Members.

18 215. As a direct and proximate result of McDonald's conduct as alleged in this
 19 Complaint, Plaintiffs and Class Members have been harmed, including but not limited to suffering
 20 lost wages and other benefits in amounts to be proven at trial.

21 **TENTH CLAIM FOR RELIEF**

22 **California Labor Code Private Attorneys General Act**

23 **[Cal. Labor Code §2698 et seq.]**

24 **(Brought by All Plaintiffs on behalf of Themselves, the Plaintiff Class, all similarly situated**
 25 **current and former McDonald's employees, and the Public Against All Defendants)**

26 216. Plaintiffs, on behalf of themselves and all aggrieved employees and/or on behalf of
 27 the plaintiff class, as well as the general public of the State of California, reallege and incorporate
 28 by reference all previous paragraphs.

217. Under the California Labor Code Private Attorneys General Act, California Labor Code §§2698-99 (“PAGA”), any aggrieved employee may bring a representative action as a private attorney general on behalf of the general public, including all other aggrieved employees, to recover civil penalties for their employers’ violations of the California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other relief available under the Labor Code, and must be allocated 75 percent to the State of California’s Labor and Workforce Development Agency and 25 percent to the aggrieved worker, pursuant to California Labor Code §2699.

218. Pursuant to California Labor Code §1198, Defendants’ employment of any Plaintiff or Class Member for longer hours than those fixed by IWC Wage Order 5-2001 or under conditions of labor prohibited by Wage Order No 5-2001 is unlawful and constitutes a violation of the California Labor Code, actionable under PAGA. Pursuant to California Labor Code §1198, it is unlawful for Defendants to have failed to pay or cause to be paid to Plaintiffs and Class Members overtime or minimum wages required by Wage Order 5-2001; to have required Plaintiffs and Class Members to work for longer hours than those fixed, or under conditions of labor prohibited by, Wage Order 5-2001; and to have violated, or refused or neglected to have complied with, any other provision of Wage Order 5-2001 as alleged herein.

219. Plaintiffs allege, on behalf of themselves, all aggrieved employees and/or on behalf of the plaintiff class, as well as the general public of the State of California, that Defendants have violated the following provisions of the California Labor Code and the following provisions of the IWC Wage Orders that are actionable through the California Labor Code and PAGA, as previously alleged herein: California Labor Code §§204, 206, 221, 223, 226, 226.7, 450, 510, 512, 1174, 1182.12, 1194, 1195.5, 1197-99, and 2802, and IWC Wage Order 5-2001 §§3, 4, 7, 8, 9, 11, and 12. Each of these violations entitles Plaintiffs, as private attorneys general, to recover the applicable statutory civil penalties on their own behalf, on behalf of all aggrieved employees, and on behalf of the general public.

220. California Labor Code §2699(a), which is part of PAGA, provides in pertinent part:

221. Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency

1 or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation
2 of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved
3 employee on behalf of himself or herself and other current or former employees pursuant to the
4 procedures specified in Section 2699.3.

5 222. California Labor Code §2699(f), which is part of PAGA, provides in pertinent part:

6 (1) For all provisions of this code except those for which a civil penalty is
7 specifically provided, there is established a civil penalty for a violation of these provisions,
8 as follows: . . .

9 (2) If, at the time of the alleged violation, the person employs one or more
10 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
11 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
12 employee per pay period for each subsequent violation.

13 223. Plaintiffs are entitled to civil penalties, to be paid by Defendants and allocated as
14 PAGA requires, pursuant to California Labor Code §2699(a) for Defendants' violations of the
15 California Labor Code and IWC Wage Orders for which violations a civil penalty is already
16 specifically provided by law; and Plaintiffs are entitled to civil penalties, to be paid by Defendants
17 and allocated as PAGA requires, pursuant to California Labor Code §2699(f) for Defendants'
18 violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty
19 is not already specifically provided.

20 224. Pursuant to California Labor Code §2699.3, on March 12, 2014, before filing the
21 original Complaint in this action, Plaintiffs, on behalf of themselves and all Class Members, gave
22 written notice by certified mail to the California Labor and Workforce Development Agency
23 ("LWDA") and Defendants of the specific provisions of the California Labor Code and IWC Wage
24 Orders alleged to have been violated, including the facts and theories to support the alleged
25 violations. The letter included a copy of, and incorporated by reference, the entire original
26 Complaint. On April 8, 2014, the LWDA sent a letter to Plaintiffs stating that it had received and
27 reviewed Plaintiffs' notice and it did not intend to investigate the alleged violations.

28 225. On November 7, 2014, before filing this First Amended Complaint, Plaintiffs, on

1 behalf of themselves and all Class Members, sent a supplemental written notice by certified mail to
 2 the LWDA and Defendants of the specific provisions of the California Code and IWC Wage
 3 Orders alleged to have been violated, including the additional facts and theories pertaining to
 4 uniform maintenance added in this First Amended Complaint to support the alleged violations in
 5 the Eighth Claim for Relief for Failure to Indemnify Employees for Necessary Expenses. Plaintiffs
 6 will amend this complaint if the LWDA notifies them within 33 days of the postmark of that
 7 supplemental notice that it intends to investigate the additional allegations pertaining to uniform
 8 maintenance in the Eighth Claim for Relief.

9 226. Therefore, Plaintiffs have complied with all of the requirements set forth in
 10 California Labor Code §2699.3 to pursue a representative action under PAGA.

11 227. Under PAGA, Plaintiffs and the State of California are entitled to recover the
 12 maximum civil penalties permitted by law for the violations of the California Labor Code and
 13 Wage Order 5-2001 that are alleged in this Complaint.

14 **ELEVENTH CLAIM FOR RELIEF**

15 **Unfair and Unlawful Business Practices**

16 **[Cal. Bus. & Prof. Code §17200 et seq.]**

17 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

18 **Against All Defendants)**

19 228. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate
 20 by reference all previous paragraphs.

21 229. Defendants have engaged in unfair and unlawful business practices in violation of
 22 California Business & Professions Code §17200 et seq. by engaging in the unlawful conduct
 23 alleged above, including but not limited to: failing to pay all wages when due and secretly paying a
 24 lower wage than purported; failing to pay the overtime premiums required by state law; failing to
 25 pay the minimum wage required by state law; failing to provide workers with all meal periods and
 26 paid rest breaks to which they are entitled; failing to pay workers an additional hour's pay for all
 27 days in which they were not provided a full and timely meal or rest break as required by state law;
 28 failing to provide employees information required by California Labor Code §§204, 226(a), and

1 1174 and Wage Order 5-2001; concealing from workers material information concerning
 2 Defendants' joint employer status and the nature and extent of the conspiracy in which Defendants
 3 are engaged; failing to indemnify workers for necessary expenses they incurred in the discharge of
 4 their duties; and negligently retaining, supervising, and/or controlling agents and/or contractors
 5 acting on their behalf.

6 230. Plaintiffs are informed and believe, and based upon such information and belief,
 7 allege that by engaging in the unfair and unlawful business practices complained of above,
 8 Defendants were able to lower their labor costs and thereby to obtain a competitive advantage over
 9 law-abiding employers with which they compete, in violation of California Business & Professions
 10 Code §17200 et seq. and California Labor Code §90.5(a), which sets forth the public policy of
 11 California to vigorously enforce minimum labor standards to ensure that employees are not
 12 required or permitted to work under substandard and unlawful conditions and to protect law-
 13 abiding employers and their employees from competitors that lower their costs by failing to comply
 14 with minimum labor standards.

15 231. As a direct and proximate result of Defendants' unfair and unlawful conduct as
 16 alleged herein, Plaintiffs and Class Members have sustained injury and damages, including unpaid
 17 wages and lost interest, in an amount to be established at trial. Plaintiffs and Class Members seek
 18 restitution of all unpaid wages owed to Plaintiffs and Class Members, disgorgement of all profits
 19 that Defendants have enjoyed as a result of their unfair and unlawful business practices, penalties,
 20 and injunctive relief.

21 **TWELFTH CLAIM FOR RELIEF**

22 **Declaratory Judgment**

23 **[Cal. Code of Civil Procedure §1060 et seq.]**

24 **(Brought by All Plaintiffs on behalf of Themselves and the Plaintiff Class**

25 **Against All Defendants)**

26 232. Plaintiffs, on behalf of themselves and the plaintiff class, reallege and incorporate
 27 by reference all previous paragraphs.

28 233. An actual controversy has arisen and now exists between the parties relating to the

1 legal rights and duties of the parties as set forth above, for which Plaintiffs desire a declaration of
 2 rights and other relief available pursuant to the California Declaratory Judgment Act, California
 3 Code of Civil Procedure §1060 et seq.

4 234. A declaratory judgment is necessary and proper in that Plaintiffs contend that
 5 Defendants have committed and continue to commit the violations set forth above and Defendants,
 6 on information and belief, will deny that they have done so and/or that they will continue to do so.

7 **THIRTEENTH CLAIM FOR RELIEF**

8 **Retaliation**

9 **[Cal. Labor Code §98.6]**

10 **(Brought by Plaintiff Salazar Against All Defendants)**

11 235. Plaintiff Salazar realleges and incorporates by reference all previous paragraphs,
 12 with exception of the allegations in paragraphs 140-147.

13 236. California Labor Code §98.6(a) prohibits employers from discharging or otherwise
 14 discriminating against any employee “because of the exercise by the employee . . . on behalf of
 15 himself, herself, or others of any rights afforded him or her.”

16 237. Defendants violated California Labor Code §98.6(a) by discriminating against
 17 Plaintiff Salazar by, among other things, reducing her hours, changing her hours to times she was
 18 not available to work, denying requested days off, “writing her up” and otherwise subjecting her to
 19 increased discipline and threats of suspension, and harassing her, because she complained to her
 20 managers that she was not paid for all hours she worked and/or because she engaged in other
 21 protected activity, including but not limited to by participating as a named plaintiff in this lawsuit.
 22 Plaintiff Salazar’s complaint involved the exercise of her rights protected by California Labor Code
 23 §§204, 226(a), 510, 1174 and IWC Wage Order 5-2001 §§3 and 7, including but not limited to the
 24 right to be compensated in accordance with state law and to receive and/or request complete and
 25 accurate information regarding her pay, hourly wage, overtime pay, and hours worked.

26 238. Plaintiff Salazar seeks damages, pursuant to Labor Code §98.6(b), which provides
 27 that “[a]ny employee who is . . . in any . . . manner discriminated against in the terms and
 28 conditions of his or her employment” for exercising his or her rights is entitled to reimbursement of

1 lost wages and work benefits caused by those acts of the employer.

2 239. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
3 Plaintiff Salazar has sustained economic damages, including loss of wages and other work benefits
4 and lost interest, in an amount to be established at trial.

5 240. Plaintiffs are informed and believe, and thereon allege, that the unlawful conduct of
6 Defendants and/or their agents, supervisors, managers, and/or employees, as described herein, was
7 malicious, fraudulent, and/or oppressive, and was done with a willful and conscious disregard for
8 the rights of Plaintiff Salazar and for the harmful consequences of Defendants' actions; and,
9 further, that Defendants and/or their agents, employees, managers or supervisors authorized,
10 condoned, and ratified the unlawful conduct of the officers, supervisors, managers, and/or other
11 employees of Defendants who retaliated against Plaintiff Salazar. Consequently, Plaintiff Salazar
12 is entitled to punitive damages against Defendants, in amounts according to proof.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request the following relief:

- 15 1. Certification of this action as a class action on behalf of the proposed class under
16 Federal Rule of Civil Procedure §23;
- 17 2. Designation of Plaintiffs as representatives of the plaintiff class;
- 18 3. A temporary, preliminary, and permanent injunction requiring Defendants to pay
19 Plaintiffs and Class Members all wages, including but not limited overtime and minimum wages,
20 for all hours worked when due, and requiring Defendants to keep accurate track of all time
21 Plaintiffs and Class Members work;
- 22 4. A temporary, preliminary, and permanent injunction requiring Defendants to
23 provide Plaintiffs and Class Members all legally required meal periods and rest breaks and to pay
24 an additional hour's pay for every day that a meal period or rest break is missed, untimely, or
25 shortened, and requiring Defendants to keep accurate track of the time Plaintiffs and Class
26 Members are provided and receive meal periods and rest breaks;
- 27 5. A temporary, preliminary, and permanent injunction requiring Defendants to
28 provide Plaintiffs and Class Members all of the information required by California Labor Code

§§226(a) and 1174 and IWC Wage Order 5-2001 §7;

6. A temporary, preliminary, and permanent injunction requiring Defendants to reimburse all necessary expenses incurred by Plaintiffs and Class Members in the discharge of their duties, including by either reimbursing the costs of maintaining uniforms or directly maintaining uniforms, and to refrain from deducting cash shortages from Plaintiffs' and Class Members' wages unless they can show the loss was the result of the employee's gross negligence or dishonest or willful act;

7. A permanent injunction prohibiting Defendants from violating the California Labor Code and IWC Wage Order 5-2001, and committing unlawful and unfair business practices proscribed by California Business & Professions Code §17200 et seq.;

8. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law:

- a. California Labor Code §§204, 206, 223, and 1195.5 by failing to pay full wages when due for all hours worked;
- b. California Labor Code §§510 and 1194(a) and IWC Wage Order 5-2001 §3, by failing to provide premium wages for work in excess of eight hours per workday or 40 hours per workweek;
- c. California Labor Code §§1182.12, 1194(a), 1194.2(a), and 1197 and IWC Wage Order 5-2001 §4, by failing to pay at least the California minimum wage;
- d. California Labor Code §§226.7 and 512 and IWC Order 5-2001 §§11 and 12, by failing to provide all required meal periods and rest breaks and failing to compensate employees for missed, untimely, or shortened meal periods and rest breaks;
- e. California Labor Code §1174 and IWC Wage Order No. 9-2001 §7, by failing to maintain and provide employees with access to complete and accurate records;
- f. California Labor Code §226, by failing to provide the information required semimonthly or with each payment of wages;
- g. California Labor Code §§221, 450, and 2802 and IWC Wage Order No. 5 2001, §§8

- 1 and 9, by failing to indemnify workers for necessary expenses incurred in the
- 2 discharge of their duties, including expenses relating to uniform maintenance and
- 3 cash register shortages;
- 4 h. California Business and Professions Code §§17200-08, by violating the provisions
- 5 set forth in subparagraphs (a)-(g); and
- 6 i. California Labor Code §98.6 for retaliating against Plaintiff Salazar;
- 7 9. An award of restitution or damages in the amount of unpaid wages, overtime,
- 8 minimum wage compensation (plus liquidated damages pursuant to California Labor Code
- 9 §1194.2), and unlawful deductions from wages (or liquidated damages pursuant to California
- 10 Labor Code § 226(e), whichever is greater), including interest thereon, subject to proof at trial;
- 11 10. An award of statutory penalties pursuant to California Labor Code §§226.3, 558,
- 12 1174.5, 1197.1, and 2698-99, and California Business & Professions Code §17206, subject to proof
- 13 at trial;
- 14 11. An award of penalties for failure to pay full wages when due pursuant to California
- 15 Labor Code §§206, 210, and 225.5 subject to proof at trial;
- 16 12. An award of restitution of all amounts owed in unpaid wages, overtime, minimum
- 17 wage compensation, and unlawful deductions from wages, and interest thereon, in an amount
- 18 according to proof at trial, pursuant to California Business & Professions Code §17203;
- 19 13. Disgorgement of profits and all other appropriate equitable relief authorized by
- 20 California Business & Professions Code §17203;
- 21 14. Punitive damages for the malicious retaliation against Plaintiff Salazar;
- 22 15. Prejudgment and postjudgment interest on all sums awarded;
- 23 16. Attorneys' fees and litigation expenses in an amount the Court determines to be
- 24 reasonable, pursuant to Labor Code §§216(b), 218.5, 226(h), 1194(a), 2699(g)(1), and 2802(c), and
- 25 California Code of Civil Procedure §1021.5, and such other provisions as may be applicable;
- 26 17. Costs of suit; and
- 27 18. Such other and further relief as is equitable, just, and proper.
- 28

1 Dated: November 7, 2014

Respectfully submitted,

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DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and similarly situated McDonald's employees, hereby demand a jury trial on all causes of action and claims with respect to which they have right to jury trial.

Dated: November 7, 2014

Respectfully submitted,

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